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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

20-CR-188 (JSR)

5 RUBEN WEIGAND and  
6 HAMID AKHAVAN,

7 Defendants.

Trial

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8 New York, N.Y.

9 March 16, 2021  
10 9:15 a.m.

11 Before:

12 HON. JED S. RAKOFF,

13 District Judge

14 APPEARANCES

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17 Southern District of New York

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JARED R. SMITH

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1 (Jury not present)

2 THE COURT: As I suspected, the chief judge was  
3 concerned about having photographs taken of the jurors, because  
4 there is a ban on that in this courthouse. I explained to her  
5 the situation. It is interesting. You would think that the  
6 confrontation clause would be satisfied by the defendants'  
7 being able to see, hear, and completely observe the witness,  
8 which of course we have arranged. But there is case law that  
9 says that the witness has to see the lawyers -- not just the  
10 lawyer questioning, the way this makes sense, but also other  
11 lawyers in the courtroom and most importantly the jury. I  
12 don't understand the rationale of those cases, but I'm willing  
13 to abide by their suggestions, illogical though it seems to be  
14 they are.

15 So what I have worked out, with the consent of the  
16 chief judge, is that when Mr. Elliott testifies, he will see  
17 the jurors, and he will be testifying from his lawyer's office.  
18 They will -- they have already received an email that my clerk  
19 sent them -- they will make no photographs or reproductions of  
20 any of the jurors. And they will destroy the pictures of the  
21 jurors as soon as the testimony is over.

22 Now, with respect to the witnesses who are going to be  
23 testifying remotely for the defense, I don't see any reason why  
24 those witnesses have to see the jury. Does any defense counsel  
25 disagree with that?

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1 MR. GILBERT: No, your Honor.

2 THE COURT: Mr. Tayback?

3 MR. TAYBACK: Your Honor, I do think that, if I  
4 understood your question, I do think the case law provides that  
5 they're supposed to see -- you say that the witness is supposed  
6 to see the jury? I believe that that is what's required.

7 THE COURT: Excuse me?

8 MR. TAYBACK: I'm not sure I understood your question,  
9 your Honor.

10 THE COURT: Is there any reason -- the jurors have to  
11 see the witness, of course.

12 MR. TAYBACK: Yes.

13 THE COURT: My question is, is there any reason why  
14 the witness has to see the jurors?

15 MR. TAYBACK: I think there is.

16 THE COURT: Yes. And what is your legal authority for  
17 that ridiculous proposition?

18 MR. TAYBACK: I believe it's the authority that we  
19 previously submitted regarding the confrontation clause.

20 THE COURT: Yes, but I'm talking about your witnesses.

21 MR. TAYBACK: Our witnesses. I apologize, your Honor.  
22 I misunderstood the question. No. I agree.

23 THE COURT: I'm sorry you misunderstood. I would not  
24 have spoken so abruptly. I agree with you that the case law  
25 says that when the government's witness testifies, he has to

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1 see the jurors, although I continue to believe that is without  
2 any real logic. But I know there's case law. I'm going to  
3 abide by it. I see no reason why defense witnesses, where no  
4 confrontation clause issue is involved, would have to see the  
5 jurors.

6 MR. TAYBACK: Agreed 100 percent.

7 MS. LA MORTE: Your Honor, just one point of  
8 clarification, and it may already be established, so you can  
9 shut me down if that's the case: The government just wanted to  
10 confirm that the defense, understanding that when it's the  
11 defense's own witnesses there generally isn't a confrontation  
12 clause problem, but our understanding of the law -- and if you  
13 need authority I can provide it at the lunch hour -- is that  
14 the confrontation clause issue doesn't arise as a result of who  
15 is calling the witness but whether the witness is going to be  
16 adverse to the position of the party calling it or not. And  
17 so, for example, in this case, our understanding is that, among  
18 the potential witnesses that the defense may call would be some  
19 bank witnesses, which the government submits supports the  
20 government's case. And so we would just ask for the record  
21 whether the defense, to the extent there is any confrontation  
22 clause right in those types of circumstances, whether the  
23 defense is waiving that right.

24 THE COURT: Who are we talking about?

25 MS. LA MORTE: The defense calling certain bank

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1 witnesses.

2 THE COURT: Who?

3 MS. LA MORTE: I believe Capital One, TD Bank, and  
4 JPMorgan.

5 MR. TAYBACK: I would need to talk to my client  
6 briefly, if I can?

7 THE COURT: I'm sorry?

8 MR. TAYBACK: I need to speak to my client briefly  
9 before waiv --

10 THE COURT: You can speak all you want. But I only  
11 gave permission for the defense to call these people because I  
12 didn't do the kind of analysis I did of the government's  
13 witness. If they can't agree to that, they'll testify live.

14 MR. TAYBACK: Understood, your Honor. I just think if  
15 the question is, will we waive the constitutional right, I --

16 THE COURT: I'm not asking you to waive a  
17 constitutional right. I'm asking you to produce these  
18 witnesses for the defense here in court unless you want to  
19 agree to Rakoff's rules.

20 MR. TAYBACK: I understand, your Honor. And we would  
21 be inclined to agree. That was our understanding.

22 THE COURT: All right. Consult with your client.

23 MS. DEININGER: Scheduling-wise, your Honor, following  
24 our discussion yesterday --

25 THE COURT: I don't actually share the government's

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1 view of the con -- I think the confrontation clause is  
2 automatically waived when the defense calls someone that the  
3 government hasn't called as part of the defense case. Whether  
4 they call them as a hostile witness or not is neither here nor  
5 there, in my view.

6 MS. LA MORTE: Hopefully it's a moot issue, but if  
7 it's not, we'll look at the case law.

8 THE COURT: All right.

9 Go ahead.

10 MS. DEININGER: Scheduling-wise, I just wanted to  
11 notify your Honor that following our conversation yesterday, we  
12 would propose that, in terms of conducting this remote  
13 testimony, that we get it all set up during lunch and then  
14 Mr. Elliott begin his testimony immediately following lunch.  
15 Our prediction at this point is that, prior to lunch, we will  
16 be in the direct of Ms. Cozzetto, so we would just pause for  
17 testimony to conduct the testimony of Mr. Elliott.

18 THE COURT: That's fine.

19 MR. TAYBACK: We would agree, your Honor.

20 THE COURT: All right. So I think we're all set.  
21 Anything else we need to take up today?

22 MS. LA MORTE: Not from the government, not this  
23 morning.

24 MR. TAYBACK: No, your Honor.

25 MR. GILBERT: No, your Honor.

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1 THE COURT: Very good.

2 MS. DEININGER: Sorry, your Honor. I actually think  
3 there were objections to two documents that we expect to  
4 introduce through Cozzetto, who could be this morning.

5 THE COURT: OK. Which are they?

6 MS. DEININGER: The first one that the defense raised  
7 an objection to is Government Exhibit 458.

8 MR. GILBERT: With regard to Government Exhibit 458,  
9 our objection is focused -- I don't know if it's available on  
10 the screen -- thank you -- on emails that are from -- not from  
11 the witness but from an email address Frenchy ESQ at  
12 ProtonMail.com. And those appear on page 7393, 7392, and 7391.

13 THE COURT: Yes, all right. Let me ask the government  
14 before I hear further from the defense, because ostensibly it  
15 looks like hearsay, what's the government's view?

16 MS. DEININGER: Well, this whole exchange, there are  
17 emails in here from Frenchy Esq., but the response to those is  
18 by Darcy Cozzetto and Guy Mizrachi, who are co-conspirators,  
19 and so those emails are necessary for the context of the  
20 exchange.

21 THE COURT: What does the defense say about that?

22 MR. GILBERT: Briefly, these are, they're fairly  
23 hearsay. Frenchy Esq. does not come up in this trial at all  
24 and appears to be one of the few individuals who is not a  
25 co-conspirator. So there's no co-conspirator.



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1 THE COURT: I don't think --

2 MR. GILBERT: It's a separate trend -- I'm sorry.

3 THE COURT: The claim is that Darcy is a  
4 co-conspirator.

5 MR. GILBERT: Right. And that's so. But the  
6 communications from Frenchy, which are not independently  
7 admissible, in our view, are unnecessary to understand the  
8 context of the other communication. It's a separate --

9 THE COURT: Well, let me -- if someone can blow up  
10 Mr. Darcy's response, I'll see what Frenchy has to say.

11 What's the relevance of all this?

12 That's a question for the government.

13 MS. DEININGER: The relevance is that they are first  
14 of all talking about the need to set up bank accounts for the  
15 dispensaries that are unrelated to their actual marijuana  
16 business. And they're talking about --

17 THE COURT: That's not stated in this particular  
18 exhibit.

19 MS. DEININGER: It is in the chain. It's farther  
20 down. And then the addresses that are discussed, that Guy  
21 Mizrachi is sending, they're talking about the corporate  
22 addresses, and they show the lack of connection to the defense.  
23 He says these are the corporate addresses for the new admin  
24 companies.

25 THE COURT: Do you have a hard copy of this?

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1 MS. DEININGER: Sure.

2 THE COURT: Because you keep going down the screen,  
3 and then having to blow it up and so forth is not easy to  
4 follow.

5 Which witness is this coming in for?

6 MS. DEININGER: Darcy Cozzetto.

7 And then there is talk, after they talk about the --  
8 after they talk about the need to set up the bank accounts,  
9 they then discuss how settlement will be hitting the accounts,  
10 and Darcy thanks everyone for the updated information provided.

11 THE COURT: Yes. So now that I've seen the whole  
12 exhibit, I understand the government's point of view. The  
13 objection is overruled and they will be received. It seems to  
14 me clear that the other emails just set the context in which  
15 Darcy's responses are relevant on the issues just mentioned.

16 (Government's Exhibit 458 received in evidence)

17 THE COURT: So let me give this back to the  
18 government.

19 So what's the next one?

20 MS. DEININGER: The government one is Government  
21 Exhibit 715. And this is actually just a subset of the exact  
22 chain that we looked at. The reason that the government is  
23 seeking to introduce this excerpt of it is that -- if you can  
24 see, it's the last one we just looked at. The only email  
25 addresses visible at the top were Darcy Cozzetto and Frenchy

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1 Esq. But this one includes additional header information to  
2 show the other parties that were involved at that point in the  
3 conversation. But it is otherwise in the exact same context.

4 THE COURT: Yes. So any other additional objection to  
5 this from the defense?

6 MR. GILBERT: The same objection.

7 THE COURT: Thank you. That objection is overruled.

8 (Government's Exhibit 715 received in evidence)

9 MS. DEININGER: I believe there may have been  
10 objection to Government Exhibit 303. We have redacted the end  
11 of this because there are messages -- it was going to be  
12 authenticated by Darcy Cozzetto. It's a Telegram exchange.  
13 There are messages exchanged after she left Eaze, and my  
14 understanding is that she never reviewed those messages and  
15 would not be able to authenticate them, so we were going to  
16 introduce a redacted version. But if there is no objection to  
17 authenticity, then we will produce the complete exchange.

18 MR. GILBERT: There is no objection, your Honor.

19 MR. TAYBACK: No objection.

20 THE COURT: Very good.

21 (Government's Exhibit 303 received in evidence)

22 THE COURT: All right. Anything else?

23 MS. DEININGER: Nothing further from the government.

24 THE COURT: We'll see you all in about 12 minutes.

25 (Recess)

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Patterson - Redirect

1 (Jury present)

2 THE COURT: All right. Our excellent jury is here and  
3 they're on their way up. So let's get the witness back on the  
4 stand.

5 15 minutes, if I recall.

6 MR. FOLLY: Yes, your Honor.

7 THE COURT: You want the stopwatch to make a loud  
8 sound at 15:01?

9 JAMES PATTERSON, resumed.

10 (Jury present)

11 THE COURT: Good morning, ladies and gentlemen. I'm  
12 glad to see the world's greatest jury is back in session.

13 I also notice Juror No. 6 is doing his thing, and I  
14 see Juror No. 4 is moving a little in that direction. So there  
15 we are.

16 All right. We are ready to continue.

17 MR. FOLLY: Thank you, your Honor.

18 REDIRECT EXAMINATION (Cont'd)

19 BY MR. FOLLY:

20 Q. Good morning, Mr. Patterson.

21 A. Good morning.

22 Q. You were asked some questions on cross-examination  
23 yesterday about Ruben. Do you recall that?

24 A. Yes.

25 Q. And specifically you were asked about Ruben's involvement

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Patterson - Redirect

1 in the Clearsettle operation during the 2016 to 2017 time  
2 period. Do you recall that?

3 A. Yes.

4 Q. He was not involved in the card processing operation during  
5 that time period, correct?

6 A. No, not to my knowledge.

7 Q. And to your knowledge Ruben became involved in 2018, in a  
8 card processing operation; is that right?

9 A. Yes.

10 Q. And that was when the name of the card processing operation  
11 was EUprocessing. Right?

12 A. Yes. That's correct.

13 Q. Ray mentioned Ruben at the Calabasas meeting in 2018,  
14 correct?

15 A. Yes.

16 Q. And the purpose of that meeting was to discuss credit and  
17 debit card processing through Ray's organization, correct?

18 A. Yes.

19 Q. What did Ray say about Ruben specifically at that meeting?

20 A. He said that he lived in Germany and he had connections to  
21 the banks that would be used to set up the accounts, and that  
22 specifically he was going to collect the applications from the  
23 dispensaries via an email address that was set up, and that he  
24 was responsible for opening the accounts.

25 Q. I believe you testified that you left that meeting early,

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Patterson - Redirect

1 correct?

2 A. Yes, I did.

3 Q. At the time that you left the meeting, what was happening?

4 A. There was a break in the meeting, and so everyone who was  
5 in the company went to the bathroom. And Ray had said that  
6 Ruben would be joining us after -- at that point, before I --  
7 before I left he said that, and then I didn't stay for the  
8 second half, the second part of that meeting.

9 Q. You testified that you spoke with Nick Fasano after the  
10 meeting about the meeting?

11 A. Yes.

12 Q. Is that right?

13 What did Nick Fasano say had occurred at the meeting  
14 after you left the meeting?

15 MR. GILBERT: Objection, asked and answered.

16 THE COURT: Overruled.

17 Q. You can answer, Mr. Patterson.

18 A. Well, he said that -- the quote he used was, he said Ray's  
19 German banker joined the meeting, and then went through the  
20 application process with the dispensaries.

21 Q. Someone named Ruben W also participated in Telegram  
22 messages discussing the card processing operation, correct?

23 A. Yes.

24 Q. You were also a participant in those messages, right?

25 A. Yes, I was.

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Patterson - Redirect

1 MR. FOLLY: Can we show the witness what's in evidence  
2 as Government Exhibit 302. You can publish that to the jury  
3 and the witness, at page 50.

4 Q. And focusing on where it says 10:52 and downward, can you  
5 read aloud just the first four messages there, from Ray  
6 Akhavan.

7 A. Yes. "Martin and Ruben have both agreed to be actively  
8 involved with helping us out. Martin is handling all reporting  
9 and reconciliation. And Ruben is interfacing with the banks.  
10 You all met Ruben in LA, and Martin will be out soon hopefully  
11 as well."

12 Q. You can stop there. We can take this down.

13 Do you recall being asked questions on  
14 cross-examination by Mr. Tayback about your understanding that  
15 Ray had contacts at certain merchant banks who were aware that  
16 the accounts were being used to conduct marijuana transactions?

17 A. Yes.

18 Q. And I believe you testified that your understanding was  
19 that some members of those banks were aware that these were  
20 marijuana transactions.

21 A. Yes.

22 Q. Now, I believe you had also indicated some of the employees  
23 at the banks were not aware that these were marijuana  
24 transactions. Is that right?

25 A. Yes. That was my understanding.

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Patterson - Redirect

1 Q. Such as employees who worked in compliance, right?

2 A. That was one specific example, yes.

3 Q. And I believe you had said that there were some situations  
4 where those employees had found out that these accounts were  
5 being used to process marijuana transactions?

6 MR. TAYBACK: Objection as to time and leading.

7 MR. FOLLY: Your Honor, I can rephrase it.

8 THE COURT: Yes. The objection on leading is  
9 overruled. But the objection on time is sustained.

10 Q. Were there certain instances that Ray brought to your  
11 attention where employees at some of the merchant banks had  
12 found out that accounts were being used to process marijuana  
13 transactions?

14 A. Yes. There was one instance I recall where an account had  
15 gotten closed, so a new account had to be opened, and Ray said  
16 that the owners of the bank were aware but that some people,  
17 some lower-level people in compliance were not, so that they  
18 were -- they let those people close the accounts, didn't tell  
19 them what was going on, and I think he said what they said is  
20 tell them "Good job," and then they reopened new accounts a  
21 little bit later.

22 Q. Now, it was your understanding that Visa did not know that  
23 the fake merchant accounts were being used to process  
24 marijuana, correct?

25 A. Yes.



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Patterson - Redirect

1 Q. It was your understanding that MasterCard did not know that  
2 these were marijuana transactions, correct?

3 A. Yes.

4 Q. It was your understanding that the issuing banks in the  
5 United States did not know that these were marijuana  
6 transactions, correct?

7 MR. TAYBACK: Objection, foundation.

8 THE COURT: Sustained.

9 Q. Mr. Patterson, was it your understanding that the purpose  
10 of this credit card processing operation was to trick US  
11 issuing banks into processing these transactions?

12 MR. TAYBACK: Objection, leading and foundation.

13 THE COURT: Overruled.

14 Overruled.

15 Q. You can answer, Mr. Patterson.

16 A. My understanding was the purpose was to conceal it from the  
17 issuing banks and Visa and MasterCard, the fact that the  
18 underlying transactions were marijuana.

19 Q. And it was your understanding that, if the issuing banks  
20 found out that these were marijuana transactions, that could  
21 eventually lead to the termination or shutdown of the  
22 operation, correct?

23 A. Yes.

24 MR. TAYBACK: Objection.

25 MR. GILBERT: Joined.

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Patterson - Redirect

1 THE COURT: Overruled.

2 Q. You can answer, Mr. Patterson?

3 THE COURT: He did answer yes.

4 Q. And Mr. Patterson, Ray Akhavan in fact told you that,  
5 correct?

6 A. Yes.

7 Q. And the underlying goal of the credit card operation was so  
8 that Eaze customers could use their credit and debit cards to  
9 purchase marijuana products through the Eaze website, correct?

10 A. Yes, that's correct.

11 Q. And in order to make that work, you needed to be able to  
12 get the money from the Eaze customers' credit card accounts, or  
13 bank accounts, to the accounts at the dispensaries, correct?

14 A. Yes.

15 Q. You were asked some questions on cross-examination about --

16 THE COURT: Counsel, I allowed you to ask a series of  
17 leading questions because the purpose of the objection on  
18 grounds of leading is only relevant with respect to a witness  
19 who can be easily led, which is, as one might infer, not  
20 necessarily this witness, but I think you've gone as far as I'm  
21 going to let you go on leading questions.

22 Q. You were asked some questions on cross-examination about  
23 whose idea it was to have the dispensaries have the  
24 relationships directly with the processors; do you recall that?

25 A. Yes.

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Patterson - Redirect

1 Q. And I believe you said that was not Ray Akhavan's decision,  
2 correct?

3 A. That's correct. That was Eaze's decision.

4 Q. Now, I'd like to ask you some questions about who was  
5 making the decisions about how the credit card processing  
6 operation worked. Who was in charge of overseeing this credit  
7 card processing operation?

8 A. Ray.

9 Q. Who was responsible for getting the fake merchant accounts  
10 that were used for the credit card transactions?

11 MR. GILBERT: Objection, leading.

12 MR. TAYBACK: Joined.

13 THE COURT: I can't imagine why you think that's  
14 leading. The question is "who," an open-ended question. Could  
15 be the man on the moon. It could be -- well, I won't speculate  
16 further, but it's certainly not leading. Overruled.

17 Q. You could answer, Mr. Patterson.

18 A. Can you repeat the question?

19 Q. Who was responsible for getting the fake merchant accounts  
20 that were used to process the credit card transactions?

21 A. My understanding was that during the Clearsettle phase it  
22 was Ray, and then the EUprocessing phase was both Ray and  
23 Ruben.

24 Q. Who were some of the main people that Ray worked with  
25 during the credit card processing operation?

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Patterson - Recross

1 A. Hussein, Ozan, Martin, Ruben, Andreas, are names that I saw  
2 in the chats.

3 Q. Mr. Patterson, did you an understanding that this was a  
4 criminal scheme during the time period when you participated in  
5 it?

6 A. Yes. It -- yes.

7 Q. And you pled guilty to participating in the bank fraud  
8 conspiracy?

9 A. Yes.

10 MR. FOLLY: No further questions.

11 THE COURT: Any recross?

12 MR. TAYBACK: Yes, your Honor.

13 RE CROSS EXAMINATION

14 BY MR. TAYBACK:

15 Q. Mr. Patterson, can you hear me?

16 A. Yes, I can.

17 Q. In a couple of places in the documents that you testified  
18 about, the word "depots" is used. "Depots" is a synonym for  
19 dispensaries?

20 A. Yes.

21 MR. TAYBACK: If you could place before the witness  
22 what's been marked and introduced as Exhibit GX 422.

23 Q. This is an email that you discussed during the course of  
24 your testimony. Do you recognize it?

25 A. Yes, I do.

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Patterson - Recross

1 Q. I'd like to direct your attention to the sentence that  
2 says, "So in itself it's not the issue." Do you see that?

3 A. Yes.

4 Q. Mr. Akhavan says to you, "So in itself it's not the issue.  
5 The issue is that usually, with high CBs" -- you understood  
6 that to be chargebacks, correct?

7 A. Yes.

8 Q. -- "you have high complaints to the bank which can result  
9 in people talking about the product, and if you have a high  
10 number of, let's say, Wells Fargo customers who complain about  
11 not liking the weed or the weed card issuing doctors" -- see  
12 that?

13 A. Yes.

14 Q. Then we go to the next sentence. It says, "The higher the  
15 chance that Wells Fargo notices weed is being sold and then  
16 reaches out to Visa and MasterCard" -- you see that?

17 A. Yes.

18 Q. Your understanding was that Visa and MasterCard were the  
19 ones that had the rules against processing marijuana, correct?

20 A. Yes. I knew that they -- well, I knew that they didn't  
21 have MCC codes for marijuana dispensaries.

22 Q. And Visa and MasterCard were the ones that would be  
23 potentially the ones to actually contact the merchant bank and  
24 do -- and cause an investigation to occur, correct?

25 A. Yes.

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Patterson - Recross

1 Q. And the events described here that you understand, the risk  
2 was after the transaction, correct? That somebody would say  
3 afterwards they contact the bank and they didn't recognize  
4 something on their bank statement?

5 A. On this particular point, yes.

6 MR. TAYBACK: Thank you. You can take it down.

7 Q. As I believe you indicated previously, you did not spend  
8 time looking at the different banks' policies, what the issuing  
9 banks would or wouldn't do, correct?

10 A. That's correct.

11 MR. TAYBACK: I have no further questions.

12 THE COURT: Anything from -- yes.

13 RECROSS EXAMINATION

14 BY MR. GILBERT:

15 Q. Mr. Patterson, you have no personal knowledge of Ruben  
16 Weigand collecting applications for bank accounts, correct?

17 A. That's correct.

18 Q. You have no personal knowledge of Mr. Weigand submitting  
19 any application to open a bank account, correct?

20 A. That's correct.

21 Q. And you have no personal knowledge of him getting what  
22 you've described as fake merchant accounts, correct?

23 A. That's correct.

24 Q. And you understood that, from Ray, that Mr. Weigand was  
25 supposed to be joining the meeting in March of 2018 that you

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Patterson - Recross

1 testified about?

2 A. Yes.

3 Q. And after you learned that, you left the meeting. Correct?

4 A. Yes.

5 Q. Before meeting with Mr. Weigand.

6 A. That's right.

7 Q. And it's true that you never requested of Mr. Akhavan that  
8 he introduce you to Mr. Weigand at any time. Correct?

9 A. Correct.

10 Q. And you never requested to speak to Mr. Weigand on the  
11 phone. Correct?

12 A. Correct.

13 Q. And in fact you never did.

14 A. No, I've never spoken to him.

15 Q. And you testified yesterday -- well -- that you believed  
16 that you started committing bank fraud in the year 2018. Isn't  
17 that true?

18 A. What I said is that that's when I would say the lingering  
19 doubts that I had were removed. Before that I was -- I knew it  
20 was -- what we were doing was -- it felt wrong, but I didn't  
21 know for sure, I would say, until after that meeting.

22 Q. And that meeting was in the year 2018. Correct?

23 A. Yes.

24 MR. GILBERT: Nothing further.

25 THE COURT: Anything else?

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Brown - Direct

1 MR. FOLLY: No, your Honor.

2 THE COURT: Thank you very much. You may step down.

3 (Witness excused)

4 THE COURT: Please call your next witness.

5 MS. DEININGER: The government calls Chuck Brown.

6 CHARLES BROWN,

7 called as a witness by the government,

8 having been duly sworn, testified as follows:

9 THE COURT: Counsel.

10 DIRECT EXAMINATION

11 BY MS. DEININGER:

12 Q. Good morning, Mr. Brown.

13 A. Good morning.

14 Q. Can you hear me OK?

15 A. Yes, I can.

16 Q. OK. Please tell me if you are not able to at any point.

17 Mr. Brown, where do you work?

18 A. I work at Actors Federal Credit Union.

19 Q. Do you mind if for the purpose of our conversation I call  
20 it Actors?

21 A. Yes. That's fine.

22 Q. How long have you worked at Actors?

23 A. Since 2008.

24 Q. And what is your current role there?

25 A. I'm the chief compliance and risk officer.



L3GAWEI1ps

Brown - Direct

1 Q. What do you do as the chief compliance and risk officer?

2 A. My primary duties are to research and advise our board of  
3 directors and the credit union staff on matters of regulatory  
4 issues that come up in the course of business.

5 Q. And do you specialize in any particular regulatory areas?

6 A. Yes. I'm a certified anti money laundering specialist.

7 Q. What is anti money laundering?

8 A. Well, money laundering is when the proceeds of an illegal  
9 action are introduced into the US banks system in an effort to  
10 obscure the origin of the funds or the fact that they came from  
11 an illegal activity. Anti money laundering would be monitoring  
12 and setting up systems and personnel in place to look for signs  
13 of that and report it to the property authorities.

14 Q. What is an example of the types of proceeds from illegal  
15 actions that might appear to be laundered?

16 A. Well, for instance, if a drug dealer, you know, earns money  
17 selling drugs on the street, then they would -- that would  
18 probably be in the form of cash, and they would need to  
19 introduce it into the system and pay their suppliers in some  
20 way. So they might try to do something like bring it into  
21 their bank and deposit it in smaller amounts than would  
22 normally need to be reported. And then from there they might  
23 even take more steps that are called layering. They might send  
24 a wire transfer to another bank or they might purchase money  
25 orders and then take it perhaps to another institution and take

L3GAWEIlps

Brown - Direct

1 further steps from that until the actual origin of the funds is  
2 no longer really very easily traced.

3 Q. How long have you been the chief compliance and risk  
4 officer at Actors?

5 A. For a little over three years.

6 Q. Did you hold any other role at Actors from the 2016 to 2019  
7 time period?

8 A. Yes. I was the senior compliance officer before I was  
9 named chief.

10 Q. How was your role different as senior compliance officer,  
11 if at all, from the role you hold now?

12 A. It's slightly more expanded. I have a larger staff that I  
13 oversee, and some areas of regulatory issues have been expanded  
14 as well. I have a slightly broader definition for my job than  
15 I did as senior compliance. But otherwise it's basically the  
16 same.

17 Q. What type of company is Actors?

18 A. Actors is a federally chartered credit union, which  
19 essentially just means that it's a not-for-profit financial  
20 cooperative, offering essentially the same services as banks.

21 Q. But what does it mean that it's federally chartered?

22 A. Well, there are two types of charters. There's a federal  
23 charter, or a state charter. It means that, if we're federally  
24 chartered, it means that we're regulated by the National Credit  
25 Union Administration and insured by a division of that National

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Brown - Direct

1 Credit Union Administration called the National Credit Union  
2 Share Insurance Fund.

3 Q. So is Actors insured by the National Credit Union Share  
4 Insurance Fund?

5 A. Yes, we are.

6 Q. Where is Actors headquartered?

7 A. We're headquartered in Manhattan in Times Square.

8 Q. And what banking services does Actor offer its members?

9 A. We offer full banking services, almost everything that a  
10 commercial bank would offer. We offer deposit accounts,  
11 savings and checking accounts, debit cards. We offer a variety  
12 of sending products, personal loans, auto loans, mortgage  
13 damages, credit cards, almost everything that you would find at  
14 a bank.

15 Q. With respect to the credit and debit card that you just  
16 mentioned, is Actors what is referred to as the issuing bank?

17 A. Yes, we are.

18 Q. So during the 2016 to 2019 time period, what credit and  
19 debit card brand did Actors partner with?

20 A. Over 99 percent of our cards were branded with the Visa  
21 logo. We did have a few MasterCards left over in that time  
22 from an earlier time period.

23 (Continued on next page)

L3GPWEI2

Brown - Direct

1 Q. So in your role, are you familiar with how transactions for  
2 credit and debit card issued by Actors are processed?

3 A. In given terms, yes.

4 Q. And what is that understanding based on?

5 A. Well, for every transaction for a credit or debit card,  
6 there are a number of different entities involved. There's the  
7 cardholder, of course, or the customer --

8 Q. Mr. Brown, if I can just pause you for a second?

9 A. Sure.

10 Q. I was just asking how you became familiar with how that  
11 process works.

12 A. Mostly just through experience, as well as reading some  
13 rules and regulations.

14 Q. And in your role, are you also familiar with Visa and  
15 MasterCard's rules for the bank and its networks?

16 A. Again, generally, yes.

17 Q. Now, I think is where you were starting to say. Can you  
18 walk me through a little bit of your understand of how  
19 transactions for Actors credit cards are processed?

20 A. Sure. There are a number of entities involved. There is a  
21 cardholder who holds an account at the issuing bank. The  
22 issuing bank, in this case us, might also use a third-party  
23 payment processor. Then there is the payment network, which we  
24 mentioned Visa and MasterCard already, but another credit card  
25 also might be Discover or American Express. They might also be

L3GPWEI2

Brown - Direct

1 the issuer if it's a credit card.

2 Then, on the other end of the transaction, is a  
3 merchant, which is a business selling goods or services of some  
4 type. That merchant would have an account with an acquirer,  
5 and that acquirer could be a financial institution, or they  
6 also might be using a third-party payment processor.

7 So when the customer or cardholder makes a purchase  
8 from a merchant, information about that card and about the  
9 transaction and about the merchant are transmitted  
10 electronically through the payment network to the issuing bank  
11 or the issuing bank's payment processor. The information  
12 transmitted would be the card number and expiration date, the  
13 CDB code.

14 MR. PELLECHI: Objection. Narrative, lacks  
15 foundation.

16 THE COURT: Well, the question called for a narrative,  
17 and there was no objection; so I will allow him to answer that.

18 However, going forward, let's be a little careful  
19 about that.

20 MS. DEININGER: Yes, your Honor.

21 THE COURT: You can finish your answer.

22 A. The information would include the card number, expiration  
23 date, the -- possibly the code on the back of the card, a PIN  
24 validation code, if it was a transaction where the customer had  
25 to put in a PIN number, the date, time and location and dollar

L3GPWEI2

Brown - Direct

1 amount of the transaction, and then the merchant's name or a  
2 merchant descriptor, and a merchant category code, which is the  
3 classification for what types of goods and services this  
4 particular merchant might fall under, under the definition of  
5 the payment networks, Visa or MasterCard.

6 Q. So just to be clear, Mr. Brown, what is your understanding  
7 of what Visa and MasterCard's role is in this process?

8 A. They establish the rules, but they also own essentially the  
9 networks that the transaction travels through. They also take  
10 care of the settlement of the funds between the two parties.

11 Q. And what is the role of the acquiring bank?

12 A. The acquiring bank essentially sponsors the merchant into  
13 the payment network. They are required to abide by a certain  
14 set of rules. They essentially do what is sometimes called an  
15 underwriting process of the merchant, meaning that the merchant  
16 applies for an account and the acquirer verifies and does due  
17 diligence on the merchant to make sure that they are -- they  
18 are who they say they are and that they are providing the goods  
19 and services that they say they provide.

20 Q. And are there any other things that the acquiring bank is  
21 looking to confirm during the due diligence process?

22 MR. TAYBACK: Objection, foundation.

23 THE COURT: Sustained.

24 Q. Mr. Brown, taking a step back, you mentioned that one roll  
25 of Visa and MasterCard is taking care of the transfers of funds

L3GPWEI2

Brown - Direct

1 between the two parties?

2 A. Yes.

3 Q. What's your understanding of what two parties -- what two  
4 parties did you mean there?

5 A. Well, it would essentially be the two institutions  
6 involved, the issuing institution and the acquiring  
7 institution. When the transaction is made, the funds are  
8 either --

9 MR. TAYBACK: Objection. It's a narrative.

10 THE COURT: Sustained. The first sentence will  
11 remain. The rest is stricken.

12 Go ahead.

13 BY MS. DEININGER:

14 Q. Mr. Brown, what's your understanding of what the merchant's  
15 responsibility is when they're being sponsored into the network  
16 by an acquiring bank?

17 MR. TAYBACK: Objection. Foundation.

18 THE COURT: Overruled.

19 A. Their responsibility is to present themselves honestly and  
20 accurately with information about their business and their  
21 goods and services to the acquirer.

22 Q. Now, you mentioned that issuers -- issuing banks can work  
23 with a payment processor. Does Actors employ a payment  
24 processor?

25 A. Yes, we do.

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Brown - Direct

1 Q. And what's the role of the payment processor?

2 A. The payment processor's role is technological, and they are  
3 the party involved in validating the transaction for security  
4 and risk mitigation purposes.

5 Q. And what does that mean, that they are responsible for  
6 validating the transaction for mitigation purposes?

7 A. So all of that information that was transmitted  
8 electronically through the payment network has to be read by  
9 our payment processor. So they're verifying that it's a valid,  
10 unexpired card; that the correct PIN code was used. They're  
11 looking to see if there is enough credit or funds available to  
12 cover the transaction, and they're also looking for any signs  
13 that it might be a prohibited transaction.

14 Q. And so then, finally, what is Actors' role in the  
15 transaction process?

16 A. So once that information has been transmitted and gone  
17 through the processor, our role is to verify whether there  
18 is -- whether there are funds available, and we send a message  
19 back through the payment processor -- our system does this  
20 automatically; we don't have a human looking at it -- sends a  
21 message back that either approves or declines the transaction.

22 Q. Can you give me some examples of where a transaction would  
23 be declined or blocked?

24 A. Well, the most obvious one would be if there were not  
25 available funds or available credit to cover the transaction.



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Brown - Direct

1 But it might also be blocked if -- we, as Actors, had set up  
2 certain parameters or certain rules to decline certain types of  
3 transactions or certain merchants even.

4 Q. And under what circumstances would Actors set up those type  
5 of rules?

6 A. Generally, it's in response to situations of fraud,  
7 complaints by our cardholders, our members who have had cases  
8 of fraud perpetrated against them. Oftentimes it comes when we  
9 have seen a pattern of fraud from a particular merchant or a  
10 particular merchant in a particular geographic location.

11 Q. Does Actors work with its payment processor to identify  
12 those patterns of fraud?

13 A. Yeah, the Actors is a small institution; so we don't really  
14 have the personnel necessarily to do a deep investigation on  
15 every case or pattern of fraud, but we work with our payment  
16 processor. Sometimes they also alert us if they see patterns  
17 of fraud across multiple institutions, since they work with  
18 more than us.

19 Q. So a few minutes ago you listed a bunch of transaction  
20 information that's received by the payment processor and Actors  
21 in the course of the transaction authorization process. One of  
22 those was amount, right?

23 A. Sorry?

24 Q. One of those was the amount of the transaction, right?

25 A. That's right.

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Brown - Direct

1 Q. And I think you also mentioned merchant name?

2 A. Yes.

3 Q. Or merchant descriptor?

4 A. That's right.

5 Q. And then is there also location information transmitted?

6 A. Yes, yes.

7 Q. And I think you mentioned a code. What were you referring  
8 to there?

9 A. Merchant category code. These are a series of codes that  
10 are set up by Visa or MasterCard to indicate the type of  
11 business involved.

12 Q. And just remind us, so who is -- who is that information  
13 transmitted to?

14 A. It's transmitted from the acquirer, through the payment  
15 network, to the issuing bank.

16 Q. And again, how does the payment processor that Actors works  
17 with utilize that information?

18 A. They verify that it's a valid merchant category code, and  
19 that information is transmitted to our system so that it can be  
20 printed on the member's monthly statements.

21 Q. And is that information utilized when they are looking for  
22 patterns of fraud, like you mentioned earlier?

23 A. Yes. It could be that we've noticed or they have noticed  
24 patterns of fraud amongst an electronic -- you know, in  
25 electronics stores or something like that, so that might raise

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Brown - Direct

1 a red flag.

2 Q. So this transaction information that the payment processor  
3 Actors receives, is it important to Actors that that  
4 information be accurate?

5 A. Yes, it is.

6 Q. Why?

7 A. Well, the integrity of the entire payment system is --  
8 depends on all parties playing by the same rules, and the  
9 accuracy of that information is important from a consumer  
10 protection point of view as well. It's important that the --  
11 what appears on the member's statements is accurate so that the  
12 member or the cardholder knows exactly what their purchase  
13 was and who it was from.

14 Q. Okay. Thank you. Once a transaction is approved, can you  
15 describe how the money for the goods or services flows?

16 A. The settlement process happens once a day and the payment  
17 network is really in charge of that. They are in charge of  
18 deducting the funds from, in our case, our settlement account  
19 at our corporate credit union, and depositing it into the  
20 acquirer's settlement account, which might be at the Federal  
21 Reserve or at their headquarters.

22 Q. So you mentioned that funds are deducted from "our  
23 settlement account;" is that an account held by Actors?

24 A. That's correct.

25 Q. And what information from card transactions ultimately goes

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Brown - Direct

1 onto an Actors' customer's statement?

2 A. The date, time, location, dollar amount and the merchant  
3 name or descriptor.

4 Q. Generally, what can happen if a customer sees a transaction  
5 on their statement that they don't recognize?

6 A. What can happen is that they might call us and say that the  
7 transaction was not authorized.

8 Q. And what would Actors do if they received that sort of call  
9 from a customer?

10 A. We would ask the cardholder for information, whether they  
11 had had the card in their possession at the time of the  
12 transaction or not, what all the facts were about the  
13 particular transaction.

14 We would then send that information to our payment  
15 processor, who would initiate an investigation. We would be  
16 required, within ten days of that cardholder reporting that  
17 unauthorized transaction to us, to give the cardholder the  
18 credit back for that, and if ultimately the transaction could  
19 not be approved to be authorized, that credit would be  
20 permanent.

21 Q. Now, you mentioned that you had sent information you  
22 received to your payment processor who would initiate an  
23 investigation. Do you have an understanding, based on your  
24 role, of generally some of the types of things your payment  
25 processor might do in that investigation?

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Brown - Direct

1 A. Very generally, yes.

2 Q. Generally, so what is your understanding?

3 A. They would probably try to contact the merchant. They  
4 would look into the coding of the transaction to see whether a  
5 PIN number was used or a signature was provided. If it was a  
6 signature, they would obtain proof, if they had a copy of the  
7 proof of signature, to see if it was the cardholder's signature  
8 or not. And essentially that's my basic understanding of some  
9 of the elements that would go into it.

10 Q. You mentioned they might contact the merchant. Do you know  
11 how they might do that for an online merchant?

12 A. I don't know that. I'm sorry.

13 Q. A minute ago we discussed how certain information regarding  
14 each transaction is sent to Actors through the network,  
15 correct?

16 A. Yes.

17 Q. How does Actors receive that information?

18 A. It's sent to our server, essentially our computer system in  
19 our main office in New York.

20 Q. And so that office is here in New York City; that's where  
21 the server is located?

22 A. That's correct. It's located in our Times Square office.

23 Q. And was it located there in the 2016 to 2019 time period?

24 A. Yes.

25 Q. So based on your role, are you familiar with Actors'

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Brown - Direct

1 policies prohibiting certain uses of Actors credit and debit  
2 cards?

3 A. Yes.

4 Q. I'd like to, Mr. Levine, if you can pull up just for the  
5 witness what's been marked for identification as Government  
6 Exhibit 2717.

7 Mr. Brown, do you recognize this?

8 A. Yes, I do.

9 Q. What is it?

10 A. It's our Visa credit card holder agreement.

11 MS. DEININGER: Your Honor, the government offers  
12 Government Exhibit 2717 into evidence.

13 MR. TAYBACK: No objection.

14 MR. PELLECHI: No objection.

15 THE COURT: Received.

16 (Government's Exhibit 2717 received in evidence)

17 MS. DEININGER: Mr. Levine, you can show that to  
18 everyone.

19 BY MS. DEININGER:

20 Q. Now, Mr. Brown, does this cardholder agreement apply to all  
21 Actors' credit cards?

22 A. Yes, it does.

23 Q. And was a version of this cardholder agreement in effect in  
24 the period between 2016 and 2019?

25 A. Yes, it was.

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Brown - Direct

1 Q. If we can scroll down to paragraph 8. I think it might be  
2 page 5. There we go.

3 Do you see paragraph 8?

4 A. Yes.

5 Q. Can you read that for me?

6 A. "Your card may not be used for any illegal transactions."

7 Q. And is it -- what's your understanding of whether marijuana  
8 transactions would be prohibited under this rule?

9 A. They would be.

10 Q. Why?

11 A. Because marijuana purchases are still illegal at the  
12 federal level and because they are against Visa rules.

13 Q. In terms of the rule in this cardholder agreement, does it  
14 make any difference whether the transaction is conducted in a  
15 state that has legalized personal use of marijuana?

16 A. No.

17 Q. Did all versions of the cardholder agreement in effect  
18 between 2016 and 2019 contain this rule?

19 A. Yes.

20 Q. Mr. Levine, you can take that down. Thank you. And can we  
21 now show, just for the witness, what has been marked for  
22 identification as Government Exhibit 2704.

23 Mr. Brown, do you recognize that document?

24 A. Yes.

25 Q. What is it?

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Brown - Direct

1 A. This is the terms and conditions of our account holder  
2 agreement, including the account debit card.

3 MS. DEININGER: Your Honor, the government offers  
4 Government Exhibit 2704 into evidence.

5 MR. TAYBACK: No objection.

6 MR. PELLECHI: No objection.

7 THE COURT: Received.

8 (Government's Exhibit 2704 received in evidence)

9 MS. DEININGER: Mr. Levine, if you can show that to  
10 everyone.

11 BY MS. DEININGER:

12 Q. And so again, Mr. Brown, what's the title of this document?

13 A. Terms and Conditions of Your Account.

14 Q. And I think you said these terms and conditions apply to  
15 all Actors' bank accounts; is that right?

16 A. That's correct.

17 Q. Was a version of these terms and conditions in effect in  
18 the period between 2016 and 2019?

19 A. Yes.

20 Q. If we can go to page 5.

21 About a third from the top there's a paragraph, it  
22 says in bold: "Advisory against illegal use." Do you see  
23 that?

24 A. Yes.

25 Q. Can you read the sentence following that?



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Brown - Direct

1 A. "You agree not to use your cards for illegal gambling or  
2 other illegal purpose."

3 Q. You can stop there. Actually, sorry. Read the second  
4 sentence?

5 A. "Display of a payment card logo by, for example, an online  
6 merchant does not necessarily mean that transactions are lawful  
7 in all jurisdictions in which the cardholder may be located."

8 Q. And just to be clear, there's a reference here to "cards."  
9 What "cards" does this apply to?

10 A. This applies to our debit cards.

11 Q. And did all versions of the Actors' terms and conditions  
12 effective between 2016 and 2019 have this rule?

13 A. Yes.

14 Q. What's your understanding of whether marijuana transactions  
15 in the United States would be prohibited under this rule?

16 A. They would be prohibited under this rule.

17 Q. Why?

18 A. For the same reasons as the credit card, the marijuana  
19 purchases are not legal at the federal level and it is against  
20 Visa/MasterCard rules.

21 Q. So again, would it make any difference if the transaction  
22 is conducted in a state that has legalized marijuana sales?

23 A. No.

24 Q. Mr. Levine, you can take that down.

25 Mr. Brown, does Actors collect any fees when its

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Brown - Direct

1 members use their cards for transactions?

2 A. Yes, we use get interchange income.

3 Q. And how much are those fees on any given transaction?

4 A. I really don't know for certain. It's a few cents.

5 Q. Is it important to Actors that it remain in compliance with  
6 Visa's rules?

7 A. Yes, it is.

8 Q. Why?

9 A. Not remaining in compliance could result in sanctions,  
10 either from our federal regulators or from Visa themselves.

11 Q. And what impact would it have on Actors' business if it  
12 wasn't able to participate in the Visa network?

13 A. It could be a huge impact. We would likely no longer be in  
14 existence.

15 Q. Would Actors knowingly approve marijuana credit or debit  
16 card transactions?

17 A. No.

18 Q. Are marijuana-related businesses permitted to open accounts  
19 with Actors?

20 A. No.

21 Q. Why not?

22 MR. TAYBACK: Objection. Relevance.

23 THE COURT: Overruled.

24 Q. You can answer the question.

25 A. While it's not explicitly prohibited by our federal

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Brown - Direct

1 regulators, the requirements for banking marijuana businesses  
2 are very stringent as a high-risk business, and Actors doesn't,  
3 at this time, have the resources to conduct the level of due  
4 diligence and take on the risk involved in banking marijuana  
5 businesses.

6 Q. And you mentioned that there were requirements for banking  
7 marijuana business. Generally, what requirements are you  
8 referring to?

9 A. Extensive due diligence on the businesses, as well as  
10 almost constant reporting of transaction activity to the  
11 Financial Crimes Enforcement Network. In many cases, many  
12 regulators feel that the institution's responsibility is to  
13 follow every transaction from seed to sale.

14 Q. So what, if anything, does Actors do to make sure it  
15 doesn't open up an account for a marijuana-related business?

16 A. We ask each business that opens an account for us what the  
17 nature and purpose of their business is. We do due diligence  
18 by verifying that through their corporate documents, online  
19 searches, things like that. So if we were to receive an  
20 application from a marijuana business, we would not accept it.

21 Q. And just to be clear, what would Actors do if a  
22 marijuana-related business applied for an account with Actors?

23 A. We would decline the account.

24 Q. What would Actors do if it learned that one of its bank  
25 accounts that it already had was held by a marijuana-related

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Brown - Direct

1 business?

2 A. We would be required to report them to the Financial Crimes  
3 Enforcement Network, or some form of law enforcement, and we  
4 would close the account.

5 Q. Is there a name for this type of report that you would  
6 submit to the Financial Crimes Enforcement Network?

7 A. It's called a Suspicious Activity Report, often referred to  
8 as a SAR.

9 Q. Is Actors required to submit SARs under certain  
10 circumstances?

11 A. Yes.

12 Q. Can you generally tell me what -- when it's required to  
13 submit a SAR?

14 A. It's required to submit a SAR if we become aware of a crime  
15 being committed or if we strongly suspect so.

16 Q. So going back to debit and credit card transactions for a  
17 minute. What would Actors do if it became aware that a  
18 particular transaction was fraudulent or illegal, after it was  
19 approved?

20 A. I'm sorry, could you rephrase the question?

21 Q. Sure. What would Actors do if it received a customer  
22 complaint indicating that a transaction might have been  
23 fraudulent or illegal, after it was approved?

24 MR. PELLECHI: Objection. Compound question.

25 THE COURT: Sustained.

L3GPWEI2

Brown - Direct

1 Q. What would Actors do if it received a customer complaint  
2 indicating that a transaction might have been illegal, after it  
3 was approved?

4 A. We would initiate the investigation with our payment  
5 processor, and if the customer said that the transaction was  
6 not theirs, then we would give them the provisional credit  
7 pending the completion of the investigation.

8 Q. And what would Actors do if it received a customer  
9 complaint indicating that a particular transaction was  
10 fraudulent after it was approved?

11 A. The same thing.

12 Q. Can you give us some examples of how fraud or illegality  
13 might come to Actors' attention?

14 A. It would primarily be through our customers.

15 Q. And would that generally be for transactions that had  
16 already been processed?

17 A. Yes, they would see it on their statements.

18 Q. What would Actors do if it found out that a merchant was  
19 submitting marijuana transactions into the Visa network for  
20 payment?

21 A. We would block that merchant.

22 Q. And how would you do that?

23 A. We would set up a rule, parameters with our payment  
24 processor.

25 MS. DEININGER: At this time, your Honor, the

L3GPWEI2

Brown - Direct

1 government would like to offer into evidence as -- actually, my  
2 apologies.

3 Mr. Levine, if you can pull up just for the witness  
4 what has been marked for identification as Government  
5 Exhibit 2705.

6 BY MS. DEININGER:

7 Q. Mr. Brown, do you recognize this?

8 A. Yes.

9 Q. What is it?

10 A. This is a signature card from one of our members. It's an  
11 account-opening application.

12 Q. And, Mr. Levine, if you can now pull up, just for the  
13 witness, Government Exhibit 2706 and 2707 next to each other.

14 Mr. Brown, do you recognize these?

15 A. Yes.

16 Q. What are they?

17 A. 2706 is a checking account application, and 2707 is an  
18 application for membership.

19 Q. Are these Actors' bank account records?

20 A. Yes, they are.

21 Q. Can we pull -- Mr. Levine, if you can pull up, just for the  
22 witness, what's been marked for identification as 2708 and  
23 2709.

24 Mr. Brown, do you recognize these?

25 A. Yes.

L3GPWEI2

Brown - Direct

1 Q. Are these also Actors' bank account records?

2 A. Yes, they are.

3 Q. Mr. Levine, if you can pull up, just for the witness,  
4 what's been marked for identification as 2710 and 2711.

5 Mr. Brown, do you recognize these?

6 A. Yes.

7 Q. Are these also Actors' bank account records?

8 A. Yes, they are.

9 Q. For individual accounts?

10 A. Yes.

11 Q. Mr. Levine, if you can now pull up, just for the witness,  
12 what's been marked for identification as 2712 and 2713.

13 Mr. Brown, do you recognize these?

14 A. Yes.

15 Q. Are these also Actors' bank account records for individual  
16 accounts?

17 A. Yes, they are.

18 Q. Mr. Levine, if you can pull up what's been marked for  
19 identification as Government Exhibit 2714 and 2715.

20 Mr. Brown, do you recognize these?

21 A. Yes.

22 Q. Are these also Actors' bank account records?

23 A. Yes, they are.

24 Q. For individual accounts?

25 A. Yes.

L3GPWEI2

Brown - Direct

1 Q. And lastly, Mr. Levine, if you can pull up Government  
2 Exhibit 2716.

3 Mr. Brown, do you recognize this?

4 A. Yes.

5 Q. What is it?

6 A. It's also a bank record and application for an individual  
7 account.

8 MS. DEININGER: Your Honor, the government offers  
9 Government Exhibits 2705 through 2716 into evidence.

10 MR. TAYBACK: The government stipulates that they're  
11 business records and no objection.

12 MR. PELLECHI: No objection.

13 THE COURT: Received.

14 MS. DEININGER: Mr. Tayback, I believe you meant the  
15 defense?

16 MR. TAYBACK: I said the defense stipulates that they  
17 are business records.

18 (Government's Exhibits 2705 through 2716 received in  
19 evidence)

20 BY MS. DEININGER:

21 Q. Mr. Levine, can you publish Government Exhibit 2705, page  
22 5, for everyone.

23 All right. Mr. Brown, can you explain what we're  
24 looking at?

25 A. It's a monthly statement of one of our members.



L3GPWEI2

Brown - Direct

1 Q. And looking at the top, can you read the name and address  
2 of the bank that's listed?

3 A. Actors Federal Credit Union, 165 West 46th Street, New  
4 York, New York 10036-2508.

5 Q. And directing your attention to the very last entry on the  
6 page, can you read that?

7 A. It's from October 3rd, 2018, point of sale purchase for a  
8 card number ending in 1332. It's for \$46.25, and the merchant  
9 is Goodegreenbazaar.com, Leeds GB on 10-3-2018 at 20:23.

10 Q. I think you -- who did you say -- based on this statement,  
11 who does the merchant appear to be?

12 A. Goodegreenbazaar.com.

13 Q. And what's your understanding of what Leeds GB reflects?

14 A. That would reflect the location.

15 Q. Is that the location of the -- the location of who?

16 A. It would be the location of the merchant.

17 Q. Is there anything you can identify in this record that  
18 links this transaction to a marijuana business in California?

19 A. No.

20 Q. Mr. Levine, if we can now publish what's in evidence as  
21 Government Exhibit 2707 and go to page 11.

22 Mr. Brown, what is this?

23 A. It is also a monthly statement.

24 Q. And what city does this account holder reside in?

25 A. New York. Astoria, New York. Queens, New York City.

L3GPWEI2

Brown - Direct

1 Q. Looking down at the page to an entry October 11th, 2018; do  
2 you see that?

3 A. Yes.

4 Q. There we go. All right. Looking at that October 11th,  
5 2018, entry, who does the merchant appear to be?

6 A. Organikals.store.

7 Q. And do you see where it says GB?

8 A. Yes.

9 Q. What's your understanding of what GB reflects?

10 A. My understanding is that it stands for Great Britain.

11 Q. And again, whose location is that supposed to be?

12 A. The merchant's.

13 Q. Is there anything you can identify in this statement of  
14 accounts that links this transaction to a marijuana business in  
15 California?

16 A. No.

17 Q. Now, if we can just go to page 12 of this same document.

18 And, Mr. Brown, if you can look to where there's an  
19 entry from November 19th, 2018; do you see that?

20 A. Yes.

21 Q. And who does it indicate is the merchant in that  
22 transaction?

23 A. Greenteacha.com.

24 Q. And based on the entry, where does it indicate that the  
25 merchant is located?

L3GPWEI2

Brown - Direct

1 A. Leeds, Great Britain.

2 Q. Is there anything you can identify in that transaction that  
3 links it to a marijuana business located in California?

4 A. No.

5 Q. One more. Mr. Levine, can you publish for everyone what's  
6 in evidence as Government Exhibit 2710, and we can go to page  
7 14.

8 Mr. Brown, just again generally, what are we looking  
9 at?

10 A. It's another statement of account, a monthly statement.

11 Q. And again, looking near the top of the statement where it  
12 identifies the cardholder, can you tell me what city the  
13 cardholder resides in?

14 A. New York.

15 Q. And what's the time period for this statement?

16 A. This is a statement for the month of October 2018.

17 Q. And now if we look down the -- actually, we can go to page  
18 19. If you can just scroll, I think this statement continues,  
19 and we're looking for an entry from October 11th, 2018. It  
20 would be the fourth entry down.

21 Mr. Brown, do you see that?

22 A. Yes.

23 Q. And who does it indicate that the merchant was in that  
24 transaction?

25 A. Soniclogistix.com.

L3GPWEI2

Brown - Direct

1 Q. And where does it indicate that the merchant was located?

2 A. Great Britain.

3 Q. Is there anything that you can identify in that transaction  
4 information that links this transaction to a marijuana business  
5 in California?

6 A. No.

7 Q. Now, Mr. Brown, directing your attention to 2020, did  
8 Actors, at some point, receive a subpoena from the government  
9 in connection with this case?

10 A. Yes.

11 Q. And does that subpoena identify the names of any merchants?

12 A. Yes.

13 Q. Did it identify -- does that include the names of the  
14 merchants we just looked at --

15 A. Yes.

16 Q. -- on this bank account record?

17 A. Yes, it did.

18 Q. Did you conduct any investigation into the merchants  
19 identified on the government's subpoena after you received  
20 that?

21 A. We did a preliminary investigation, yes. Essentially, we  
22 looked up their names on the internet.

23 Q. And were you able -- what were you able -- were you able to  
24 make any determinations as to their business?

25 A. No, not really. We found nothing definitive.

L3GPWEI2

Brown - Cross

1 Q. And have you taken any other action with regard to the  
2 merchants identified in the government subpoena to Actors?

3 A. I'm sorry, could you repeat that?

4 Q. Have you taken any other action with regard to the  
5 merchants identified in the government's subpoena?

6 A. Yes. Once we understood a little bit more about the facts  
7 of the case, which has been very recent, then we did institute  
8 a rule with our payment processor to block transactions from  
9 the merchant names that we knew about.

10 Q. And roughly when was that done?

11 A. It was done about a week ago.

12 MS. DEININGER: No further questions, your Honor.

13 THE COURT: All right. Cross-examination.

14 CROSS-EXAMINATION

15 BY MR. TAYBACK:

16 Q. Mr. Brown, can you hear me?

17 A. Yes, thank you.

18 Q. My name is Christopher Tayback, and I represent Mr. Akhavan  
19 during this trial. I have a few questions for you.

20 If you could -- if Mr. McLeod could bring up GX2704.

21 That's the debit cardholder agreement you testified  
22 about. It should be on the screen in front of you. One  
23 moment. Do you have that in front of you?

24 A. Yes.

25 Q. If I could direct your attention to page 5?

L3GPWEI2

Brown - Cross

1 And bring up the paragraph that says "advisory against  
2 illegal use."

3 Do you see that?

4 A. Yes.

5 Q. You say there you agree not to use your cards for illegal  
6 gambling or other illegal purpose. You don't define in this  
7 agreement anywhere illegal purpose, correct?

8 A. That's correct.

9 Q. You do give an example here as illegal gambling as one  
10 specific example, correct?

11 A. Yes.

12 Q. Now, you understand that during the period of time in which  
13 you testified that this agreement was in effect, marijuana was  
14 legal in California for medicinal and then for all purposes?

15 A. I'm not aware of when it became legal, but I am aware that  
16 it has been made legal.

17 Q. Now, there's nothing in this agreement to the customer that  
18 specifically addresses marijuana, correct?

19 A. That's correct.

20 Q. And, in fact, Actors, the bank itself, the credit union  
21 itself, has no policy anywhere, no written policy, with respect  
22 to marijuana specifically, correct?

23 A. That's correct.

24 Q. Now, the sentence in this -- or this provision then goes on  
25 with another sentence that says, "display of payment card logo

L3GPWEI2

Brown - Cross

1 by, for example, an online merchant, does not necessarily mean  
2 that transactions are lawful in all jurisdictions in which the  
3 cardholder may be located." Do you see that?

4 A. Yes, I do.

5 Q. When you say "all jurisdictions in which the cardholder may  
6 be located," you mean there are some things that may be legal  
7 in some places but not in others?

8 A. Yes.

9 Q. And the cardholder -- you understand Actors' cardholders,  
10 they're free to use their card in any or all 50 states,  
11 correct?

12 A. As well as overseas.

13 Q. And you don't specify here for your cardholders how they're  
14 to determine the legality in a situation where something might  
15 be legal in one jurisdiction versus illegal in another,  
16 correct?

17 A. I'm sorry, could you repeat that?

18 Q. You don't give the customers any instruction about how to  
19 determine whether or not a transaction is lawful in one  
20 jurisdiction versus another, correct?

21 A. That's correct.

22 Q. Now, because you mentioned illegal gambling, it's clear  
23 that Actors can specify specific kinds of activities that it  
24 believes customers need to know are disapproved by Actors,  
25 correct?

L3GPWEI2

Brown - Cross

1 A. We can.

2 Q. And you did not do that for marijuana?

3 A. That's correct.

4 Q. And you say illegal gambling, is it your understanding that  
5 gambling with your credit or, in this case, debit card is legal  
6 in some states but not in others?

7 A. No, that's not my understanding.

8 Q. Your understanding is it's illegal, correct?

9 A. My understanding is that it is illegal for a gambling  
10 institution located in the United States.

11 Q. To take a debit card?

12 A. Correct.

13 Q. Now, if I could have you, Mr. McLeod, put up  
14 Exhibit GX2717.

15 And now, you recognize this as the credit card holder  
16 agreement that you testified about?

17 A. Yes, sir.

18 Q. If you could bring up page 5830. Now, this one just says,  
19 "Your card may not be used for any illegal transactions." Do  
20 you see that?

21 A. Yes.

22 Q. You don't define illegal transactions anywhere in this  
23 agreement either, correct?

24 A. That's correct.

25 Q. In fact, you don't even specifically mention illegal



L3GPWEI2

Brown - Cross

1 gambling in this agreement, correct?

2 A. That's correct.

3 Q. Why is that?

4 A. I don't know. I wasn't the -- I didn't write it.

5 Generally, credit card agreements are taken directly from Visa.

6 Q. Okay. And you understand, as you just testified, that

7 marijuana, at least during some period of time when these

8 agreements were in place, was legalized in California?

9 A. Yes.

10 Q. So you understand that a customer might be confused, absent

11 further guidance, about whether or not a transaction to buy

12 marijuana with a credit card is legal or not legal?

13 MS. DEININGER: Objection.

14 THE COURT: Sustained.

15 Q. It is correct that Actors have chosen not to give any

16 instruction in its cardholder agreements, debit or credit, to

17 its customers specifying what the rules are for marijuana,

18 correct?

19 MS. DEININGER: Objection.

20 THE COURT: Asked and answered, and also I think

21 ambiguous. Sustained.

22 Q. It is true that Actors chose not to modify this agreement

23 in any way, correct, to specify marijuana?

24 A. That's correct.

25 Q. I want to ask you a question about this particular

L3GPWEI2

Brown - Cross

1 document.

2 If you go back to the first page.

3 As opposed to the debit agreement, that doesn't seem  
4 to have any of the Actors' header on it; do you see that? It  
5 doesn't have the Actors logo on it?

6 A. That's correct.

7 Q. Do you know why that is?

8 A. I believe it's because it's part of a larger document.

9 Q. So this is only a portion of the document?

10 A. It's the entire cardholder agreement. I'm not actually  
11 certain whether it is part of our application or a separate  
12 agreement.

13 Q. And if you look at the next page -- or, I'm sorry, the  
14 final page, this paragraph sort of stands on its own on this  
15 page. Is that the way the agreement actually looks?

16 A. I believe that this is a printout from our online  
17 application; so it may not look that way online.

18 Q. And if you could go back to the second page, I think you  
19 said this was taken from a Visa form?

20 A. The general language is, is my understanding.

21 Q. And if you could take a look at the second page, the letter

22 C. You'll notice in that first sentence, where it says  
23 "cardholder agrees to pay Actors Federal Credit Union an annul  
24 membership," that's a typo, right?

25 A. Yes, it is.

L3GPWEI2

Brown - Cross

1 Q. That should be the word "annual," correct?

2 A. Yes.

3 Q. You can take that down. So you describe how the bank  
4 relies upon Visa for a variety of aspects of its credit and  
5 debit card processing?

6 A. We rely on Visa to provide the network for the transactions  
7 to follow.

8 Q. And I believe I understood you to say that if Actors was  
9 not part of the Visa network, Actors might very well go out of  
10 business; is that right?

11 A. Yes.

12 Q. And that's not just because of the fees that it earns  
13 whenever any customer uses a credit or debit card, correct?  
14 For other reasons as well?

15 A. Yes, it is for other reasons.

16 Q. In fact, it's in part because you want to please your  
17 customers, correct?

18 A. Yes.

19 Q. Having access to a credit and debit card you can use around  
20 the country is important to your customers, right?

21 A. It would be, yes.

22 Q. And you want to please them, correct?

23 A. Yes.

24 Q. Because you're a full -- you endeavor to be a full-service  
25 credit union, like a full-service commercial bank?

L3GPWEI2

Brown - Cross

1 A. That's correct.

2 Q. Now, for this trial you were asked about some documents  
3 that the government subpoenaed; do you remember that?

4 A. Yes.

5 Q. And you testified about a few of them. I'm going to ask  
6 you about some of those and some others. You produced to the  
7 government files for individual customers, correct, individual  
8 consumers of the bank?

9 A. That's correct.

10 Q. If you could put up for the witness only GX2712.

11 I'd ask if you recognize this -- and maybe flip  
12 through it -- as a portion of the file for one of those  
13 customers. Do you see that?

14 A. Yes.

15 Q. And then I'm going to have -- just if you can recall the  
16 name of this particular --

17 MR. TAYBACK: At this point, your Honor, I would offer  
18 Exhibit GX2712.

19 MS. DEININGER: I believe it's already in evidence.

20 MR. TAYBACK: Okay.

21 BY MR. TAYBACK:

22 Q. If this is in evidence, this is the particular customer I'm  
23 going to show you. I'm going to ask you, there are an  
24 additional -- you produced all the bank statements for this  
25 particular customer, correct?

L3GPWEI2

Brown - Cross

1 A. I'm sorry?

2 Q. I'll withdraw the question. Let me show you what's been  
3 marked but not yet introduced, HAX10054. Now, do you recognize  
4 this as additional bank statements produced by you with respect  
5 to that same customer?

6 A. Yes.

7 MR. TAYBACK: At this time, I'd offer HAX10054.

8 (Pause)

9 THE COURT: You need to reach a decision.

10 MS. DEININGER: No objection.

11 THE COURT: Received.

12 MR. TAYBACK: Thank you.

13 (Defendant's Exhibit HAX10054 received in evidence)

14 BY MR. TAYBACK:

15 Q. This is additional account information for the same  
16 customer we just looked at, correct?

17 A. That's correct.

18 Q. Now, if I could direct your attention to page 32, an entry  
19 for May 15th, 2019. In order to be able to see it, I've  
20 brought it up.

21 MR. TAYBACK: Your Honor, at this time, we offer  
22 Exhibit 10054. We ask it to be displayed. I can't see if it  
23 is being displayed. It is. Thank you.

24 Q. Now, you have in front of you a particular line item; do  
25 you see that?

L3GPWEI2

Brown - Cross

1 A. Yes.

2 Q. Now, do you see that it says OMO CBS/Medmen; do you see  
3 that?

4 A. Yes, I do.

5 Q. Do you know that Medmen is a marijuana dispensary?

6 A. No, I was not aware of that.

7 Q. The first time you're hearing that is now?

8 A. Yes.

9 Q. So if there were a transaction for Medmen for this  
10 particular customer on May 15th, on July 12th and on August 5th  
11 of 2019, that's not something that Actors has done anything to  
12 investigate, correct?

13 MS. DEININGER: Objection.

14 THE COURT: Ground?

15 MR. TAYBACK: I can rephrase the question, your Honor.

16 BY MR. TAYBACK:

17 Q. Is it true that you haven't done anything -- Actors hasn't  
18 done anything to investigate this purchase?

19 MS. DEININGER: Objection. There's a motion in limine  
20 on this point.

21 THE COURT: I'm sorry?

22 MS. DEININGER: I believe it was motion in limine 4.

23 THE COURT: Oh, okay. Now, I understand your  
24 objection. Sustained.

25 BY MR. TAYBACK:

L3GPWEI2

Brown - Cross

1 Q. Now, Mr. Brown, I'd like to show you what's been introduced  
2 as an exhibit, GX2713. It's another customer's account file.  
3 Do you see that?

4 A. Yes.

5 Q. Now, there were some additional bank statements also  
6 produced for this witness, correct?

7 A. Yes.

8 Q. Did you do anything to investigate whether any of the  
9 transactions reflected on that additional bank statement also  
10 included other marijuana transactions?

11 MS. DEININGER: Objection.

12 THE COURT: Sustained.

13 Q. The transaction we just looked at for that first customer,  
14 do you know what the MCC was that was used for that  
15 transaction?

16 A. No.

17 Q. In fact, it's fair to say that you can't tell from any of  
18 the records what the MCC was for any of the transactions,  
19 correct?

20 MS. DEININGER: Objection. Vague.

21 THE COURT: Overruled.

22 THE WITNESS: I'm sorry, I didn't hear the ruling.

23 THE COURT: You can answer that question.

24 A. Could you repeat the question?

25 Q. In fact, looking at the transaction I just asked questions

L3GPWEI2

Brown - Cross

1 about previously, fair to say you can't tell what the MCC that  
2 was used for this transaction was, correct?

3 A. I can't tell, but our payment processor could.

4 Q. At the time of the transaction, correct?

5 A. Correct.

6 THE COURT: How much more do you have?

7 MR. TAYBACK: About 15 minutes, your Honor.

8 THE COURT: So in about three minutes we'll give the  
9 jury their mid-morning break.

10 MR. TAYBACK: Understand.

11 Q. Now, the transaction that we just looked at was processed,  
12 as was the transactions that the government highlighted from  
13 this customer, correct?

14 A. Yes.

15 Q. That means that Actors actually did make, whatever amount  
16 it is, cents per swipe, correct?

17 A. Yes.

18 Q. And the customer, in the absence of any challenge to the  
19 transaction, the customer presumably got what they were paying  
20 for?

21 A. I wouldn't know that.

22 Q. You don't know one way or the other, correct?

23 A. Yes.

24 Q. But you didn't receive any complaints from the -- about the  
25 transactions that the government showed you, correct?



L3GPWEI2

Brown - Cross

1 MS. DEININGER: Objection. Foundation.

2 THE COURT: Overruled.

3 A. I'm not aware if the transactions were challenged or not.

4 Q. And in your review of the files, the bank files of these  
5 customers, you didn't see challenges to the transactions that  
6 the government just highlighted, correct?

7 A. That is correct.

8 MR. TAYBACK: Your Honor, if you want to take the  
9 break, I'm going to move to a slightly different subject.

10 THE COURT: All right. So we are going to take our  
11 mid-morning break. We'll see you in 15 minutes.

12 (Jury not present)

13 THE COURT: You may step down. I'll see you in 15  
14 minutes.

15 (Witness temporarily excused)

16 Please be seated. Anything anyone needs to raise with  
17 the Court?

18 MR. TAYBACK: No, your Honor.

19 THE COURT: Okay.

20 MR. FOLLY: Your Honor, this is not an issue that is  
21 going to come up today, but we do anticipate it for tomorrow.  
22 So we may be at the point where we were planning to introduce  
23 the portion of defendant Weigand's post-arrest statement.

24 THE COURT: I was waiting.

25 MR. FOLLY: We had started that discussion but never

L3GPWEI2

Brown - Cross

1 finished.

2 THE COURT: All right. So maybe at the end of today  
3 we'll take that up.

4 MR. FOLLY: Thank you.

5 MS. DEININGER: Your Honor, after this witness, the  
6 government is anticipating calling Darcy Cozzetto, and we'll  
7 just need a brief sidebar before that to discuss her immunity  
8 order.

9 THE COURT: Okay. We'll take a sidebar then. Okay.  
10 Very good.

11 (Recess)

12 (Continued on next page)

L3GAWEI3ps

1 (Jury not present)

2 THE COURT: The jury is on its way up. That takes a  
3 couple minutes. So do you want to handle that immunity?

4 MS. LA MORTE: Do you want me to get her?

5 THE COURT: Yes. We can do it right here in open  
6 court.

7 You can just stand there. That's fine for this  
8 purpose.

9 So please state your name for the record.

10 MS. COZZETTO: Darcy Cozzetto.

11 THE COURT: And Ms. Cozzetto, is it your intention to  
12 invoke your Fifth Amendment privilege against self-incrimina-  
13 tion to any and all questions that might be put to you in this  
14 matter?

15 MS. COZZETTO: Yes, your Honor.

16 THE COURT: And I will therefore grant the immunity  
17 order. You understand that if you fail to tell the truth in  
18 any respect, that voids this immunity. You understand that.

19 MS. COZZETTO: Yes, sir.

20 THE COURT: Also, you understand that this immunity  
21 only protects against use of whatever you say here in court.  
22 It doesn't protect against any independent accusation that  
23 might be brought. You understand that.

24 MS. COZZETTO: Yes, sir.

25 THE COURT: OK. Very good. You can return to the

L3GAWEI3ps

Brown - Cross

1 witness room.

2 MS. COZZETTO: Thank you.

3 THE COURT: Then I'll give the signed order and  
4 attachments to the government.

5 And let's get the witness back on the stand.

6 CHARLES BROWN, resumed.

7 (Jury present)

8 THE COURT: All right. Counsel, continue.

9 CROSS EXAMINATION (Cont'd)

10 BY MR. TAYBACK:

11 Q. Mr. Brown, if I could ask Mr. McLeod to bring up GX Exhibit  
12 2712. You've previously looked at that.

13 MR. TAYBACK: I apologize for the delay, your Honor.

14 THE COURT: No problem.

15 MR. TAYBACK: GX 2712.

16 Q. Let me start by asking some questions -- there it comes.

17 If we go to the entry of the bank statement for April  
18 8, 2019. Now, you looked at this particular entry on your  
19 direct examination, where it says "point-of-sale purchase,  
20 soniclogistix.com." You see that?

21 A. Yes.

22 Q. There is a number there that's after 18003052157. Did you  
23 ever try to call that number?

24 A. No.

25 Q. Did anyone from Actors?

L3GAWEI3ps

Brown - Cross

1 MS. DEININGER: Objection, foundation.

2 Q. If you know.

3 Do you know whether anyone from Actors ever tried to  
4 call that number?

5 MS. DEININGER: Objection, foundation.

6 THE COURT: Sustained.

7 Q. Did you ever try to call that number?

8 A. No.

9 Q. And you have no idea, then, what that number is, correct,  
10 what it refers to?

11 MS. DEININGER: Objection, foundation.

12 THE COURT: Well, I don't know about that, but let's  
13 see. First you asked him, "Did you ever try to call that  
14 number?" He answered, "No." Then you asked him, "Did you ever  
15 try to call that number?" He answered, "No." And now you're  
16 asking him, "And you have no idea, then, what that number is,  
17 correct, what it refers to?"

18 "Objection, foundation."

19 I'll overrule it. You want to ask that question twice  
20 too?

21 MR. TAYBACK: I'll withdraw the question when you put  
22 it that way, your Honor.

23 Q. Let me ask you this. You produced documents, that is to  
24 say Actors produced documents, to the government in February of  
25 2020, correct?

L3GAWEI3ps

Brown - Cross

1 A. Yes.

2 Q. In that intervening year or 13 months, did you do anything  
3 to investigate any of the entries that the government asked you  
4 about, until last week?

5 A. Yes, we did.

6 Q. And what did you do?

7 A. We looked up the merchants online to see if we could  
8 determine anything, any additional facts, about what the nature  
9 of the case was, and then, when we had a little bit more  
10 information, when we learned -- this was sometime later that we  
11 learned it was related to marijuana, we contacted our payment  
12 processor and asked them if there was a way for them to block  
13 marijuana purchases.

14 Q. You didn't contact the customers, correct?

15 A. That is correct.

16 Q. And you haven't terminated their cards, correct?

17 A. That is correct.

18 Q. And you haven't warned them not to engage in such  
19 transactions in the future, correct?

20 A. That is also correct. They are not all still currently  
21 cardholders with us.

22 Q. But those who are, you haven't warned them not to engage in  
23 those transactions in the future, correct?

24 A. That is correct.

25 Q. Now, if you could take a look at -- let me back up here.

L3GAWEI3ps

Brown - Cross

1 MR. TAYBACK: If you could bring up Exhibit GX 2705,  
2 which is in evidence.

3 Q. If you would look at the name of this particular cardholder  
4 for Actors Bank. You produced bank records for this particular  
5 customer as well, in response to the subpoena, right?

6 A. I believe so, yes.

7 Q. Now, I want to ask you some questions about how descriptors  
8 are used. If I understood you correctly, there's no one at  
9 Actors who actually looks at the descriptors to decide whether  
10 or not to approve a transaction, correct?

11 A. Not at the time of the transaction.

12 Q. And in fact, is it your experience that the descriptors  
13 don't always describe what it is that was purchased, correct?

14 A. They don't describe what's purchased. They describe the  
15 business.

16 MR. TAYBACK: If you could put up, just for the  
17 witness, Exhibit HAX10057.

18 Q. And you recognize this as the additional bank -- or bank  
19 records for one of the customers that you produced bank records  
20 for, correct?

21 A. Yes.

22 Q. And we looked at some of the account paper work for this  
23 customer earlier, correct, in your direct?

24 A. I believe so, yes.

25 Q. If I could ask you to direct your attention to --

L3GAWEI3ps

Brown - Cross

1 MR. TAYBACK: What's the date of the next entry?

2 Q. -- to the entries beginning March 12, 2019. Do you see  
3 that?

4 A. Yes.

5 Q. This is a true and accurate copy of the bank records  
6 pertaining to that customer you testified about on direct,  
7 correct?

8 A. Yes.

9 MR. TAYBACK: I would I'd offer Exhibit HAX10057 in  
10 evidence.

11 MS. DEININGER: Objection, relevance.

12 MR. TAYBACK: May I be heard?

13 THE COURT: Yes.

14 Go ahead.

15 Q. If you look at the descriptors for --

16 THE COURT: Oh, no, I meant --

17 MR. TAYBACK: May I be heard?

18 THE COURT: Yes.

19 MR. TAYBACK: I believe this is an example of the  
20 descriptors that do not provide any insight into the merchant.

21 THE COURT: All right. I'll allow it. We'll see.

22 (Defendant's Exhibit HAX10057 received in evidence)

23 Q. Do you see the descriptors that are here?

24 A. Yes.

25 Q. The first one is "FYESCT.com." Do you see that?



L3GAWEI3ps

Brown - Cross

1 A. Yes, I do.

2 Q. You can't tell what that transaction is all about, correct?

3 A. What the transaction is about?

4 Q. What the product was or what the merchant was. Correct?

5 A. I would assume that the merchant was FYESCT.com.

6 Q. But you don't know what they do or sell, correct?

7 A. That is correct.

8 Q. So you wouldn't know if they were a marijuana merchant or  
9 otherwise, correct?

10 A. I wouldn't personally know.

11 Q. And as you sit here you don't know whether anybody would  
12 know that?

13 MS. DEININGER: Objection, foundation.

14 MR. TAYBACK: Well, withdraw the question.

15 Q. Is there anybody that Actors relies upon that you would  
16 expect would know that answer?

17 A. A payment processor.

18 Q. And how would *they* know the answer?

19 A. I don't know.

20 Q. You'll see that there are other similar collections of  
21 letters used as descriptors going down this page. Do you see  
22 that?

23 A. Yes, I do.

24 Q. Have you ever seen descriptors like that before?

25 A. I have.

L3GAWEI3ps

Brown - Cross

1 Q. And they're not -- they don't communicate anything about  
2 the merchant or the product, correct?

3 A. My understanding is that if it's a dot-com like that, that  
4 would be the address of the merchant, the URL address, the web  
5 address.

6 Q. But you've never gone to any of these URLs, correct?

7 MS. DEININGER: Objection, irrelevant.

8 Q. Let me ask the question another way. That's not something  
9 Actors does, go to various URLs of various descriptors,  
10 correct?

11 A. Unless we are alerted to for a particular reason.

12 MR. TAYBACK: You can take that down. Thank you.

13 If you could go to Exhibit 2705.

14 Q. This is another customer, whose records you produced to the  
15 government in this case, correct?

16 A. Yes.

17 Q. And you also produced his bank records, for this particular  
18 customer, correct?

19 A. Yes.

20 MR. TAYBACK: If you could put up for the witness only  
21 HAX10056.

22 Q. And these are bank records that reflect the bank activity  
23 of that same customer, correct?

24 A. Yes.

25 MR. TAYBACK: At this time, your Honor, I'd offer

L3GAWEI3ps

Brown - Cross

1 HAX10056 in evidence.

2 MS. DEININGER: Objection, relevance.

3 MR. TAYBACK: May I be heard?

4 THE COURT: I will receive it.

5 (Defendant's Exhibit HAX10056 received in evidence)

6 Q. If you could go to page 5 of this document, I'm going to  
7 show you a couple entries, and I blacked out the other one so  
8 it's easier to see.

9 MR. TAYBACK: If you go to the next page, actually.

10 Q. On 2/27/2018 -- see that? There is an entry that says  
11 www.fantasysportsco. Do you see that?

12 A. Yes.

13 Q. Do you know whether that's a gambling site?

14 MS. DEININGER: Objection, motion in limine 3.

15 THE COURT: Sustained.

16 MR. TAYBACK: Take it down. Thank you.

17 Q. Does Actors have any processing place for identifying  
18 gambling sites, something that's specifically prohibited by the  
19 cardholder agreement in place?

20 A. Our payment processor would be able to identify, by  
21 merchant category code, if there was a gambling location  
22 located in the United States.

23 Q. But you don't know whether the descriptor plays any role in  
24 that, correct?

25 A. I do not know.

L3GAWEI3ps

Brown - Cross

1 Q. There was -- there is a thing that customers can obtain  
2 called overdraft protection, correct?

3 A. Yes.

4 Q. And if a customer has an overdraft protection, isn't it  
5 true that the bank will cover an overdraft in certain  
6 situations, up to a certain amount?

7 A. Yes.

8 Q. And then it charges the customer a fee, correct?

9 A. That's correct.

10 Q. What's that fee?

11 A. I'm sorry?

12 Q. What is that fee?

13 A. In our case it was \$27.

14 Q. And the determination of whether or not to cover a  
15 transaction is made by the bank, not the payment processor?

16 A. That's correct.

17 Q. So when the bank decides to approve a transaction, it's  
18 looking to see whether the customer has some indicia of fraud,  
19 like they're not in the location where the charge is occurring,  
20 correct?

21 A. I'm sorry. I didn't understand the question.

22 Q. Sure. I want to find out the things that the bank looks at  
23 before it approves a transaction to go through.

24 A. If the customer has opted in for overdraft protection and  
25 they are in good standing with the credit union, meaning that

L3GAWEI3ps

Brown - Cross

1 their account is on time, that they paid the fees back on time,  
2 then we would cover a transaction.

3 Q. As long as you're convinced that they have money or  
4 overdraft protection and that they -- that it's their  
5 transaction, correct?

6 A. Yes. We wouldn't know whether that was their transaction  
7 unless they notified that it wasn't.

8 Q. So really all you're looking for is, do they have enough  
9 money or do they have overdraft protection, correct? To  
10 approve a transaction.

11 A. We would also be looking to see if it was a valid unexpired  
12 card, if the validation code was correct, and if there was any  
13 indication that it was a prohibited transaction.

14 Q. And the things you would look at for that last category,  
15 you rely on your payment processor, correct?

16 A. Yes.

17 Q. You don't -- the bank doesn't look at the MCC or the  
18 descriptor, correct? The bank.

19 A. That is correct.

20 Q. And you don't know what the payment processor, how they --  
21 how they determine whether an MCC should or shouldn't be put  
22 through? Correct?

23 A. Well, I do know that if we have specifically prohibited a  
24 particular merchant or merchant category code, then they would  
25 not put it through.

L3GAWEI3ps

Brown - Cross

1 Q. And it's true, isn't it, that there is no merchant category  
2 code for marijuana?

3 A. That is correct.

4 Q. So you haven't prohibited an MCC for marijuana, correct?

5 MS. DEININGER: Objection, misleading.

6 THE COURT: Sustained.

7 Q. And you agree that the descriptors -- withdraw that.

8 In fact there are no descriptors for marijuana that  
9 you have asked your payment processor to prohibit, correct?

10 A. We have established a rule to prohibit the descriptors that  
11 we know about.

12 Q. And are those the ones that the government identified in  
13 direct?

14 A. Yes.

15 Q. But none others, correct?

16 A. Not yet.

17 Q. So that was done in the last couple weeks?

18 A. Yeah.

19 I'm sorry. Yes.

20 Q. Now, you mentioned FinCEN?

21 A. I'm sorry?

22 Q. I believe you mentioned your direct testimony a reference  
23 to FinCEN?

24 A. FinCEN, yes.

25 Q. What is FinCEN?

L3GAWEI3ps

Brown - Cross

1 A. FinCEN is the Financial Crimes Enforcement Network.

2 Q. And that is the federal government's guidance?

3 A. It's a federal -- yeah. It's a -- it's a -- it's a federal  
4 entity that collects and distributes information about  
5 financial crimes. It's a law enforcement database.

6 Q. And FinCEN has provided guidance to banks and credit unions  
7 with respect to marijuana transactions, correct?

8 A. To banking marijuana businesses.

9 Q. Is it fair to say you don't consider the use of credit and  
10 debit cards to be the same as banking marijuana businesses,  
11 correct?

12 A. No, I do not consider them the same.

13 Q. When you talked about SARs being filled out, it's not your  
14 understanding you have to complete a SARs form for the  
15 transactions of your customers where they may have engaged in  
16 purchasing marijuana, correct?

17 A. The decision to file or not file a SAR is in large part up  
18 to the discretion of the financial institution.

19 Q. And you haven't filed any SARs with respect to the  
20 transactions that the government identified with you on direct,  
21 correct?

22 A. I'm not entirely clear whether I am allowed to discuss the  
23 existence of specific SARs. It's prohibited. They are highly  
24 secret.

25 Q. "SARs" stands for "suspicious activity report," correct?

L3GAWEI3ps

Brown - Cross

1 A. That is correct.

2 MR. TAYBACK: May I have one moment, your Honor.

3 Q. To be clear, among the information contained in the  
4 descriptor, you understand that to be the URL for the merchant,  
5 is one of the things?

6 MS. DEININGER: Objection, misleading.

7 MR. TAYBACK: I'll rephrase it.

8 Q. Is your understanding of what's contained in a descriptor,  
9 does it include the URL for the merchant?

10 A. The examples that you showed me, that would be my best  
11 guess.

12 Q. But it's a guess by you, correct?

13 A. I'm sorry?

14 Q. A guess? It's a guess by you? That's what you said?

15 A. Based on what you showed me for those specific examples.

16 Q. And is it your understanding also that a telephone number  
17 is often contained in the descriptor?

18 A. I have seen them on statements. I'm not sure which field  
19 that is in the transaction code.

20 Q. Is it also fair to say that you're not an expert in the use  
21 of descriptors?

22 A. That is fair to say.

23 Q. And you're not an expert in merchant category codes,  
24 correct?

25 A. That is also correct.



L3GAWEI3ps

Brown - Cross

1 MR. TAYBACK: I have no further questions. Thank you.

2 THE COURT: OK. Counsel for Mr. Weigand.

3 MR. PELLECHI: May I proceed?

4 THE COURT: Yes.

5 CROSS-EXAMINATION

6 BY MR. PELLECHI:

7 Q. Good almost afternoon, Mr. Brown. My name is Steve  
8 Pellechi. I'm an attorney for Mr. Weigand.

9 I just want to address a few of the things that you  
10 had testified to on direct. You had testified that marijuana  
11 transactions are against Visa's rules, correct?

12 A. Yes.

13 Q. But Visa's rules don't specifically prohibit marijuana  
14 transactions, correct?

15 A. I have not seen it in the written rules, but I've seen a  
16 statement by a Visa representative.

17 Q. But visa's actual rules don't reference marijuana at all,  
18 correct?

19 A. Not to my knowledge.

20 Q. And to your understanding, is marijuana legal in other  
21 countries?

22 A. I'm sorry. Could you repeat that?

23 Q. Is marijuana legal in other countries?

24 MS. DEININGER: Objection.

25 MR. PELLECHI: I'm sorry, your Honor. Was there a

L3GAWEI3ps

Brown - Cross

1 ruling?

2 THE COURT: Yes. Sustained.

3 Q. Mr. Brown, you testified on direct that marijuana is not  
4 prohibited by your federal regulators, correct?

5 A. Banking marijuana businesses is not explicitly prohibited.

6 Q. And it's your understanding that some credit unions  
7 actually bank marijuana-related businesses, correct?

8 A. Yes.

9 Q. You had described that there's a heavy compliance burden  
10 with respect to banking MRBs, marijuana related businesses,  
11 right?

12 A. That's correct.

13 Q. And it was your testimony that you don't have the capacity  
14 to conduct this due diligence, right?

15 A. It's our judgment that we don't have the resources to do  
16 so.

17 Q. But, Mr. Brown, none of the documents that you have turned  
18 over to the government with respect to this case involve  
19 opening up a business account, right?

20 A. I don't believe there are any business documents in this.

21 Q. How is my volume, by the way?

22 A. It's getting better.

23 Q. OK. Let me know if you can't hear me or if I'm too loud.

24 A. OK.

25 Q. Mr. Brown, you've never met with Ruben Weigand before,

L3GAWEI3ps

Brown - Cross

1 correct?

2 A. That's correct.

3 Q. You've never spoken to him?

4 A. That's correct.

5 Q. Never emailed him?

6 A. No.

7 Q. You never had any communications whatsoever with

8 Mr. Weigand.

9 A. That is correct.

10 Q. And you had testified that Actors had turned over a  
11 collection of documents in response to a subpoena with respect  
12 to this case?

13 A. Yes.

14 Q. Did you review those documents?

15 A. Yes.

16 Q. And you reviewed all those documents.

17 A. Yes.

18 Q. And do you know roughly how many documents you had turned  
19 over to the government?

20 A. It's been a long time. I have no idea.

21 Q. You've been prepping for this case for a while?

22 A. We responded to the subpoena last February. We didn't hear  
23 anything else about it until much later in the year.

24 Q. And, Mr. Brown, you don't recall ever seeing Ruben  
25 Weigand's name on any of those documents, correct?

L3GAWEI3ps

Brown - Cross

1 A. That is correct.

2 Q. Now, you had testified on direct about Actors being a  
3 nonprofit, right?

4 A. That is correct.

5 Q. Now, that's not unique amongst credit unions, correct?

6 A. All credit unions are not profit.

7 Q. Right. And all credit unions are also financial  
8 cooperatives, correct?

9 A. That is correct.

10 Q. And when you describe Actors as a nonprofit, that doesn't  
11 mean that Actors doesn't produce income, right?

12 A. That is correct.

13 Q. And you had explained on direct that you offer a lot of the  
14 same financial services that a bank would offer.

15 A. Yes.

16 Q. And in the same way a bank would make a profit off of those  
17 financial services, so does Actors, right?

18 A. Yes.

19 Q. You earn interest on loans.

20 A. Correct.

21 Q. You earn a fee per every transaction that a cardholder  
22 swipes on one of your cards, correct?

23 A. Yes.

24 Q. The only difference is that the profit for Actors, it goes  
25 to the owners of Actors, right?

L3GAWEI3ps

Brown - Cross

1 A. That is correct.

2 Q. And the owners are the members of Actors, correct?

3 A. That is correct.

4 Q. Now, on direct, you said that it was part of your role to  
5 make recommendations to Actors' board, right?

6 A. To the board of directors and the staff.

7 Q. And that -- those recommendations, they relate to  
8 compliance policies for Actors?

9 A. Yes.

10 Q. Do they relate to how well a compliance policy should be  
11 communicated to Actors members?

12 A. In some cases, yes.

13 Q. And is it fair to say that one of the purposes for  
14 instituting a compliance policy is to make members aware of  
15 what is prohibited, right?

16 A. I'm sorry. Could you rephrase?

17 Q. Sure. Absolutely.

18 One of the reasons -- is it fair to say that a reason  
19 for instituting a policy would be so that Actors members are  
20 aware of what restrictions they're subject to?

21 MS. DEININGER: Objection, foundation.

22 THE COURT: Sustained.

23 Q. Mr. Brown, in making your recommendations to the board of  
24 Actors, do you discuss certain motivations for instituting a  
25 policy?

L3GAWEI3ps

Brown - Cross

1 A. Yes.

2 Q. And amongst those motivations for instituting a policy,  
3 would it be to let Actors members know what restrictions  
4 they're subject to?

5 A. It depends on what type of policy. Not all policies are  
6 concerning member behavior.

7 Q. If it does concern member behavior, is it fair to say that  
8 that would be one of the motivations?

9 A. Yes.

10 Q. And do you believe it's particularly important to institute  
11 a policy where Actors' position on a certain matter would  
12 otherwise be unclear?

13 THE COURT: Sustained.

14 Q. Mr. Brown, on direct you had discussed this kind of general  
15 provision in two agreements related to illegal transactions,  
16 correct?

17 A. Yes.

18 Q. And it was your testimony that this provision encompasses  
19 marijuana-related transactions. Right?

20 A. Yes.

21 Q. Now, that's never been communicated to Actors members,  
22 right?

23 A. That is correct.

24 Q. None of the documents you have produced to the government  
25 in this case involve communications between Actors and Actors

L3GAWEI3ps

Brown - Cross

1 members where you're clarifying that that provision relates to  
2 marijuana transactions, correct?

3 A. That is correct.

4 Q. Now, you had discussed that Actors outsources its debit and  
5 credit card payment processing, right?

6 A. That is correct.

7 Q. But Actors is the issuer on the Visa network, right?

8 A. Yes.

9 Q. So isn't it true that Actors is the party that's ultimately  
10 responsible to Visa with respect to transactions that are  
11 processed on Actors cards?

12 A. Yes.

13 Q. And you do have the ability, and I think you discussed  
14 doing this on direct, but you have the ability to reach out to  
15 these third-party processors to discuss what should be blocked.  
16 Right?

17 A. Yes.

18 Q. And you had discussed reaching out to the third-party  
19 processor for your debit cards, right?

20 A. Yes.

21 Q. That's Co-op?

22 A. Yes, that's right.

23 Q. Now from, 2016 to 2019, have you ever reached out to Co-op  
24 with respect to marijuana transactions?

25 A. Not that I'm aware of.

L3GAWEI3ps

Brown - Cross

1 Q. You never told them that Actors had this policy that  
2 prohibits marijuana transactions --

3 THE COURT: In order to move this along, I need to  
4 advise counsel, if an answer to one question precludes the  
5 second question, why are you asking the second question? The  
6 first question was, "Now, from 2016 to 2019, have you ever  
7 reached out to Co-op with respect to marijuana transactions?"  
8 "A. Not that I'm aware of."

9 This next question began, "You never told them  
10 that" -- etc., which was nothing but a rhetorical question,  
11 given the answer to the first question. Move on.

12 MR. PELLECHI: Understood, your Honor.

13 Q. Now, on direct, Mr. Brown, you had looked at a number of  
14 debit card statements, correct?

15 A. They were bank statements. Yes.

16 Q. Right. And I think you testified on cross that you had  
17 never reached out to these cardholders to let them know that  
18 what they had done on their debit cards was against Actors'  
19 policy, correct?

20 A. Correct.

21 Q. But Actors does have the ability to take certain reactive  
22 measures when a member violates its policies, correct?

23 A. Yes.

24 Q. And the agreements that you had discussed on direct, they  
25 give Actors the authority to take actions against those



L3GAWEI3ps

Brown - Redirect

1 members, correct?

2 A. Yes.

3 Q. You could -- there's a number of things you can do, right?

4 You could issue a warning to the cardholder?

5 A. Yes.

6 Q. You can instruct them not to do it again?

7 A. Yes.

8 Q. You could invoke the limitation of services policy and take  
9 away their cards?

10 A. Yes.

11 Q. And you didn't do any of that with respect to the  
12 cardholders that you had discussed on direct, correct?

13 A. That's correct.

14 Q. And you also have the ability to amend your agreements with  
15 the cardholders, correct?

16 MS. DEININGER: Objection, foundation.

17 THE COURT: Sustained, but also irrelevance sustained.

18 MR. PELLECHI: One moment, your Honor.

19 No further questions at this time.

20 THE COURT: Redirect.

21 REDIRECT EXAMINATION

22 BY MS. DEININGER:

23 Q. Good after -- or still good morning. Good morning,  
24 Mr. Brown.

25 I think you testified a minute ago that Actors never

L3GAWEI3ps

Brown - Redirect

1 reached out to the payment processor Co-op about any marijuana  
2 purchased in the 2016 to 2018 time period. Is that correct?

3 A. During that time period we did not reach out to them that  
4 I'm aware of.

5 Q. And to your knowledge, did Actors become aware of any  
6 marijuana merchant that it was processing transactions for  
7 during that time period?

8 A. Not that I'm aware of, no.

9 Q. You also were asked on cross-examination whether Visa's  
10 rules reference marijuana transactions. Do you remember that?

11 A. Yes.

12 Q. And you said that they don't reference marijuana  
13 transactions, right?

14 A. That I recall. I have not read every Visa rule there is.  
15 It's a manual the size of *War and Peace*.

16 Q. Do you know Visa does have rules prohibiting illegal  
17 transactions?

18 A. Yes.

19 Q. Yes, they do?

20 A. Yes, I do.

21 MS. DEININGER: And if we can, Mr. Levine, if you can  
22 pull up Government Exhibit 2704 in evidence, and I think it's  
23 page 6. Please scroll down. Sorry. Page 5. OK.

24 Q. Looking back at the section that had the "advisory against  
25 illegal use" --

L3GAWEI3ps

Brown - Redirect

1 A. Yes.

2 Q. -- this says you should not use your cards for illegal  
3 gambling or other illegal purpose. The reference to illegal  
4 gambling, is that an example or an exhaustive list of all  
5 illegal activity?

6 A. It was an example.

7 Q. Are there other types of illegal activity that are  
8 prohibited that are not listed here?

9 A. Yes.

10 Q. Can you give me some examples?

11 A. I was afraid you'd ask that.

12 Q. Any example with other illegal activities that haven't  
13 listed here that you can think of?

14 A. I'm trying to think of them.

15 Q. Well, sales of cocaine.

16 A. That's correct. That would also be illegal.

17 Q. Or a sale of heroin.

18 A. That would be illegal.

19 To purchase an unlicensed firearm would be illegal.

20 Q. Now, you've been asked some questions about what data  
21 Actors reviews before it approves transactions on  
22 cross-examination, right? Is that correct?

23 A. Yes.

24 Q. And one of the things you talk about is that that you check  
25 the account balance, right?

L3GAWEI3ps

Brown - Redirect

1 A. Our system checks that. No, that's not done by human eye.  
2 Transactions are taking place 24 hours a day.

3 Q. But Actors also employs a third-party payment processor,  
4 right?

5 A. That's correct.

6 Q. And the third payment processor, you testified on direct,  
7 does additional review of transaction information before  
8 transactions are approved. Is that correct?

9 A. That's my understanding, yes.

10 Q. And they also do a broader review, to your understanding,  
11 to look for patterns of fraud and illegality, right?

12 A. That's correct.

13 Q. And Actors relies on the work of the payment processor that  
14 it has employed; is that correct?

15 A. That's correct.

16 Q. You also were asked on cross about whether there's a  
17 merchant category code, an MCC, for marijuana. Do you remember  
18 that?

19 A. Yes.

20 Q. I believe you said that to your knowledge there's not,  
21 right?

22 A. That's correct.

23 Q. In fact you went and asked your debit card payment  
24 processor if there was one, right?

25 A. I did.

L3GAWEI3ps

Brown - Redirect

1 Q. And that you could block marijuana transactions using that,  
2 right?

3 A. That's correct.

4 Q. Now, if there had been one, what would you have done?

5 A. We would have requested a block on marijuana purchases.

6 Q. And that's because --

7 A. Category code.

8 Q. Is that because information about whether something is a  
9 marijuana transaction is important to Actors?

10 A. Yes.

11 MR. TAYBACK: Objection, leading.

12 THE COURT: Overruled.

13 He said yes.

14 BY MS. DEININGER:

15 Q. And you were asked some questions about whether you had  
16 closed the cardholder accounts for the bank statements that we  
17 looked at earlier. Do you remember that?

18 A. Yes.

19 Q. And you haven't closed any of those accounts, right?

20 A. That is correct.

21 Q. Why not?

22 A. Because when the -- when they received the subpoena and  
23 subsequently for most of the year, we did not know exactly what  
24 the nature of the purchases were. I still can't say I have  
25 firsthand knowledge that it was our members making those

L3GAWEI3ps

Brown - Redirect

1 purchases. And I can't say for sure whether they knew that  
2 what they were doing was illegal.

3 (Continued on next page)

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L3GPWEI4

Brown - Recross

1 MS. DEININGER: Thank you. One minute, your Honor.

2 THE COURT: Okay.

3 MS. DEININGER: No further questions.

4 THE COURT: Anything else?

5 MR. TAYBACK: Very briefly.

6 RECROSS EXAMINATION

7 BY MR. TAYBACK:

8 Q. Mr. Brown, you indicated in your last answer that you don't  
9 know whether the customers that used their Actors cards to buy  
10 marijuana knew what they were doing was illegal; do you  
11 remember that?

12 A. Yes.

13 Q. You haven't called and asked them, correct?

14 A. That's correct.

15 Q. And Actors doesn't describe marijuana status regarding  
16 legality in any of its consumer-facing documents, correct?

17 A. That's correct.

18 Q. It's true, isn't it, that you're not aware of anyplace in  
19 the United States where cocaine is legal to buy for a consumer  
20 off the street, correct?

21 A. That is correct.

22 Q. And the same with heroin?

23 A. Yes.

24 Q. You're not aware of any storefronts where you can go in and  
25 buy cocaine and heroin, correct?

L3GPWEI4

Brown - Further Redirect

1 A. No.

2 Q. It's your understanding that the -- I'll withdraw that.

3 MR. TAYBACK: No further questions.

4 MS. DEININGER: I have one question.

5 THE COURT: Well, first, is there anything from  
6 Mr. Weigand's counsel?

7 MR. PELLECHI: Nothing further, your Honor.

8 FURTHER REDIRECT EXAMINATION

9 BY MS. DEININGER:

10 Q. Mr. Brown, just one question.

11 To your knowledge, are there any states in the United  
12 States where marijuana sales are legal under federal law?

13 A. Not under federal law, no.

14 MS. DEININGER: No further questions.

15 THE COURT: Anything else?

16 MR. TAYBACK: Nothing further.

17 THE COURT: Thank you so much. You may step down.

18 (Witness excused)

19 Please call your next witness.

20 MS. DEININGER: The government calls Darcy Cozzetto.

21 THE COURT: Remain standing but take off your mask.  
22 Raise your right hand, please.

23 DARCY COZZETTO,

24 called as a witness by the Government,

25 having been duly sworn, testified as follows:



L3GPWEI4

Cozzetto - Direct

1 THE COURT: Please be seated. State and spell your  
2 full name.

3 DIRECT EXAMINATION

4 BY MS. DEININGER:

5 Q. Ms. Cozzetto, if you could state and spell your name?

6 A. Darcy Cozzetto, D-a-r-cy, C-o-z-z-e-t-t-o.

7 Q. Good afternoon, Ms. Cozzetto. Can you hear me okay?

8 A. I can. Thank you.

9 Q. Okay. Let me know if you have any problems. Okay?

10 Ms. Cozzetto, how old are you?

11 A. I'm 40 years old.

12 Q. Where do you live?

13 A. I live in Spokane, Washington.

14 Q. What do you do for a living?

15 A. I'm the chief operating officer of The Bouqs Company.

16 Q. What is The Bouqs Company?

17 A. Bouqs is a direct-to-consumer flower brand.

18 Q. And what is your role there?

19 A. My role as the chief operating officer is to run the  
20 day-to-day business.

21 Q. How long have you worked for The Bouqs?

22 A. About two-and-a-half years, since November of 2018.

23 Q. What did you do before you took a job at Bouqs?

24 A. Prior to working at The Bouqs, I worked at Eaze Technology.

25 Q. And what kind of company is Eaze Technologies?

L3GPWEI4

Cozzetto - Direct

1 A. When I worked there, Eaze Technology was a technology  
2 company in the legal cannabis space in California.

3 Q. I think you described it as being in the legal cannabis  
4 space; is that correct?

5 A. Yes.

6 Q. And what was your understanding, at the time you worked  
7 there, of whether marijuana sales were legal under California  
8 law?

9 A. My understanding, when I worked at Eaze, was that  
10 California sales were legal. I'm sorry, cannabis sales were  
11 legal under California law.

12 Q. And what was your understanding of whether cannabis sales  
13 were legal under federal law?

14 A. My understanding was that cannabis sales were illegal under  
15 federal law.

16 Q. And you understood that at the time you worked at Eaze?

17 A. Yes.

18 Q. So when you referred to being in the legal cannabis space,  
19 you were just referring to it being legal under state law?

20 A. Yes, under California state law.

21 Q. What was your role at Eaze?

22 A. My role was senior vice president of operations.

23 Q. And what were your general responsibilities at Eaze in that  
24 role?

25 A. I had three main components of my team. One was

L3GPWEI4

Cozzetto - Direct

1 interfacing with the depots or dispensaries; one was a team  
2 method inventory planning and case pack allocation between and  
3 pack point and the driver's cars; and the third piece is called  
4 the live operations team. It was a team that, in the moment of  
5 a delivery if there was a problem with technology or with the  
6 driver or customer service, they would help out. That team was  
7 also responsible for making sure that we hit our daily sales  
8 goal.

9 Q. How long did you hold that role?

10 A. I worked there about 11 months.

11 Q. So was that in -- what years was that in?

12 A. I started October 2017 and left September of 2018.

13 Q. Thank you. At the time that you worked there, where was  
14 Eaze located?

15 A. When I worked at Eaze, there were two main corporate  
16 offices, one was in San Francisco and one was in Los Angeles.

17 Q. And where were Eaze's customers located?

18 A. Eaze's customers were located in California.

19 Q. And where were the dispensaries located?

20 A. The dispensaries were also located in California.

21 Q. So now drawing your attention to the 2017 to 2018 time  
22 period, when you were working at Eaze, what payment methods did  
23 Eaze offer its customers?

24 A. When I worked at Eaze, the payment methods offered were  
25 cash and credit card.

L3GPWEI4

Cozzetto - Direct

1 Q. And during that time period, did you participate in a  
2 scheme to process Eaze credit and debit card payments?

3 A. Yes.

4 Q. In that scheme, was the information used to process the  
5 credit card transactions truthful?

6 A. No.

7 Q. To your knowledge, what types of untruthful information  
8 were included?

9 A. To my knowledge, the merchant code was not accurate, and  
10 also the information on the customer's credit card statement  
11 was inaccurate.

12 Q. And the information on the customer's credit card  
13 statement, did that include a merchant descriptor?

14 A. Yes, I believe it did.

15 Q. Or a merchant name?

16 A. Yes.

17 Q. And were those merchant names and descriptors, were those  
18 accurate?

19 A. Not to my knowledge, no.

20 Q. Who were some of the main people outside of Eaze, from your  
21 perspective, involved in this credit card processing scheme?

22 A. My main persons of contact were Ray, Guy and Andreas.

23 Q. Do you know Ray's last name?

24 A. I believe it's Akhavan.

25 Q. And how about Guy's?

L3GPWEI4

Cozzetto - Direct

1 A. I believe Mizrahi.

2 Q. Did you ever come to learn a last name for Andreas?

3 A. No, I did not.

4 Q. When you started at Eaze, were you initially involved in  
5 credit card processing?

6 A. No, I was not.

7 Q. Did that eventually change?

8 A. Yes, it did.

9 Q. So roughly when did that start changing?

10 A. It started changing in January of 2018.

11 Q. Okay. So directing your attention to March of 2018, did  
12 you come to attend a meeting with Ray Akhavan?

13 A. Yes, I did.

14 Q. How was that meeting arranged?

15 A. From my understanding -- well, what I know is that my boss,  
16 Nick Fasano, told me that we were going to have the meeting.  
17 It was my understanding that Jim, our CEO, had told Nick, and  
18 Nick asked me to contact some of the dispensary owners to  
19 attend the meeting as well.

20 Q. You mentioned Nick Fasano, who is Nick Fasano?

21 A. Nick Fasano was my direct manager when I worked at Eaze.  
22 At the time, he was the chief revenue officer.

23 Q. And you mentioned Jim Patterson, who was Jim Patterson?

24 A. When I worked at Eaze, Jim Patterson was the CEO of the  
25 company.

L3GPWEI4

Cozzetto - Direct

1 Q. Did they tell you who this meeting was going to be with?

2 A. Yes, I believe they mentioned Ray's name.

3 Q. Did you have an understanding of who Ray was at that time?

4 A. I had heard his name from Jim and Nick in regards to the  
5 Clearsettle credit card payment processing.

6 Q. And what was -- and to your knowledge, what was your  
7 understanding about what Clearsettle payment processing was?

8 A. I didn't have a lot of details about what the Clearsettle  
9 payment processing was. I just knew that Eaze was processing  
10 credit cards via Clearsettle.

11 Q. What was the purpose of the meeting they were asking you to  
12 help arrange?

13 A. My understanding of the purpose of the meeting was Eaze had  
14 left credit cards because the Clearsettle solution had gone  
15 down, and Ray was going to propose a new solution so credit  
16 cards could be back up.

17 Q. Did Nick Fasano say anything to you about how he felt about  
18 attending this meeting?

19 A. I don't remember --

20 MR. TAYBACK: Objection, hearsay.

21 THE COURT: Sustained.

22 MS. DEININGER: So relevant to the witness' state of  
23 mind.

24 THE COURT: Sustained.

25 BY MS. DEININGER:

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Cozzetto - Direct

1 Q. What Eaze employees went to the meeting?

2 A. The Eaze employees that I remember being there were myself,  
3 Jim, Nick and David Amable.

4 Q. And who is David Amable?

5 A. David Amable was the director of business development.

6 Q. And who went to the meeting from the dispensaries?

7 A. The dispensaries that I remember being -- or the people I  
8 remember being there from the dispensaries were Justin from the  
9 Natoma dispensary, Marty from Hometown Heart, Chris from  
10 Emerald City, Craig from Perennial, Nathan from Superior.

11 Q. Were there any of the -- any of the dispensaries who were  
12 working with Eaze who didn't participate in the meeting?

13 A. Yes.

14 Q. And what one was that?

15 A. Will from Herbn Leaf was unable to attend the meeting.

16 Q. Do you know why they didn't participate in the meeting?

17 A. I don't know why he wasn't able to attend.

18 Q. Do you know if they tried to participate in the meeting in  
19 another way?

20 A. Yes.

21 MR. GILBERT: Objection.

22 THE COURT: Sustained.

23 Q. Did Nick Fasano or Jim Patterson mention anything to you  
24 about Herbn Leaf trying to attend the meeting?

25 MR. GILBERT: Objection.

L3GPWEI4

Cozzetto - Direct

1 THE COURT: Sustained.

2 MR. TAYBACK: Statement of co-conspirators, your  
3 Honor.

4 THE COURT: It's not clear -- who are you alleging is  
5 the co-conspirator?

6 MS. DEININGER: They are the named co-conspirators.

7 THE COURT: So how is this in furtherance of the  
8 conspiracy?

9 MS. DEININGER: It's all referring to arranging this  
10 meeting.

11 THE COURT: But this is about someone who didn't  
12 attend, right?

13 MS. DEININGER: And what they said about their desire  
14 to attend.

15 THE COURT: I think it's relevance is limited. It's  
16 potential for confusion is considerable; so on 403 grounds, I  
17 sustain the objection.

18 BY MS. DEININGER:

19 Q. Ms. Cozzetto, did Jim Patterson tell you anything about  
20 whether anyone could call into the meeting?

21 A. Yes. He mentioned that we were not to have -- we were not  
22 to have phones at the meeting. We were not to accept any phone  
23 calls during the meeting.

24 Q. And have you ever been to any other business meeting where  
25 phones weren't allowed?



L3GPWEI4

Cozzetto - Direct

1 A. No, I have not.

2 MS. DEININGER: I'm sorry, your Honor. I think there  
3 was an objection. I was just waiting for a ruling.

4 THE COURT: I didn't hear any objection.

5 MR. GILBERT: Yes, I had an objection, your Honor.

6 THE COURT: You have to speak louder. The reporter  
7 didn't pick up your objection either.

8 MR. GILBERT: Sorry.

9 THE COURT: But now that I've heard it, I overrule it.  
10 I think the answer was given, and you may continue.

11 BY MS. DEININGER:

12 Q. So, Ms. Cozzetto, where did this meeting take place?

13 A. The meeting took place in Calabasas.

14 Q. And did you have an understanding of whose offices it took  
15 place at?

16 A. Yes.

17 Q. Whose were those?

18 A. My understanding is that they were at Ray's offices.

19 Q. Why did you believe those were Ray's offices?

20 A. I'm fairly certain that Jim mentioned that we were going to  
21 meet in Ray's offices, but also once we got there, it was clear  
22 that the office we were in -- the personal office we were in  
23 was Ray's.

24 Q. How did you get to the meeting?

25 A. Nick had a personal driver that he used, and so that driver

L3GPWEI4

Cozzetto - Direct

1 brought colleagues. There were two big, black cars that showed  
2 up as to the offices in Eaze. We had asked the dispensaries to  
3 meet us at the corporate offices, and then we all got in the  
4 cars and went.

5 Q. And by "all," who are you referring to? Who got in the  
6 cars?

7 A. Myself, Nick, Jim and David, and then the dispensary owners  
8 that were able to come to the meeting.

9 Q. Did Jim Patterson tell you anything while you were in the  
10 car on the way to the meeting?

11 A. Yes.

12 Q. What did he say?

13 A. I believe Jim was in one -- the other car. Nick and I were  
14 in one car, with the dispensaries split. Jim called, I can't  
15 remember if it was me or Nick, but we put him on speaker phone,  
16 and he gave everyone in kind of the two cars a pre-meeting  
17 conversation.

18 Q. And what was the substance of that pre-meeting  
19 conversation?

20 A. He just reiterated the importance of credit cards to Eaze  
21 and to the dispensaries and, you know, said that this was an  
22 important meeting and that we should be professional and polite  
23 with Ray.

24 Q. And what was your impression of all of these arrangements  
25 for this meeting?

L3GPWEI4

Cozzetto - Direct

1 MR. TAYBACK: Objection.

2 MR. GILBERT: Join.

3 THE COURT: Sustained.

4 Q. What happened after you got to Ray's office?

5 A. When we got to Ray's office, he was finishing, I believe,  
6 another meeting, or he was otherwise engaged. We waited in the  
7 lobby for him to be ready. I met Guy in person in the lobby.

8 Q. Was that the first time that you had met Guy?

9 A. Yes, it was.

10 Q. Had you had previous interactions with Guy?

11 A. Yes, I had.

12 Q. In what form, what form of contact?

13 A. Mostly via text, possibly some e-mail, but Guy was my main  
14 point of contact when I was trying to get some of the funds  
15 released for the dispensaries via the Clearsettle processing  
16 solution.

17 Q. So where did the actual meeting end up taking place?

18 A. The actual meeting took place in Ray's personal office.

19 Q. And besides the people from Eaze and the dispensaries you  
20 came with, who was there?

21 A. Ray was there, of course. There was -- there was another  
22 gentleman that I met there, but I don't recall how long he was  
23 in the meeting.

24 Q. Okay. Can you describe the setup of the room where the  
25 meeting took place?

L3GPWEI4

Cozzetto - Direct

1 A. Ray's personal office was quite large. There was a kind of  
2 living room setup. That's where we sat. So there were some  
3 couches and chairs. It was a little bit more of an intimate  
4 setting than a conference table.

5 Q. And how was Ray positioned in contrast to everyone else?

6 A. Ray was sitting in a chair, I guess, kind of at one end of  
7 the circle. So he was -- he was the main speaker. At least I  
8 know I moved my body kind of so that I could focus on him.

9 Q. What was the general subject of the meeting?

10 A. So there were several kind of topics that we discussed.  
11 You know, the first part was welcoming us and all that. Then  
12 we talked about standard credit card processing. From there,  
13 we moved into high-risk credit card processing. Then from  
14 there, it was kind of a Q and A, next-steps conversation. And  
15 then finally, kind of the break up of the meeting and milling  
16 about, social, you know, "nice to meet you."

17 Q. Okay. So let's walk through each one of those. So you  
18 said, first, Ray talked about normal credit card processing; is  
19 that right?

20 A. Yes.

21 Q. Okay. So what did he say about that?

22 A. He first asked if any of us were aware of how standard  
23 credit card processing works. Most of us in the room were not.  
24 So he explained it to us. What I remember is he said there's a  
25 merchant ID that the merchant of record will use and that talks

L3GPWEI4

Cozzetto - Direct

1 about the kind of the industry that the merchant is in.

2 And then there is, on the credit card statement that a  
3 customer gets, there is information from the merchant so that  
4 the customer is clear to the customer how -- you know, who  
5 processed that transaction. And then we talked about  
6 chargebacks a bit as well.

7 Q. All right. So you mentioned a merchant ID; was that a  
8 code?

9 A. Yes, it's a code that, I think, links to the industry. So  
10 if you are a grocery store, it might be grocery, or something  
11 like that.

12 Q. All right. And then you said he talked about chargebacks.  
13 What did he say about chargebacks?

14 A. He mentioned that in the United States, it was legal for  
15 customers to issue a chargeback against their credit card  
16 company if they were unaware of what the charge on their credit  
17 card statement was for.

18 Q. All right. And then you said you talked about -- that he  
19 talked about high-risk credit card processing, right?

20 A. Yes.

21 Q. What did he say about that?

22 A. He talked about kind of the differences between standard --  
23 standard and what he called high risk. The differences being,  
24 that I remember, in the case of Eaze, there is no merchant code  
25 for cannabis; so we would have to be creative about what we

L3GPWEI4

Cozzetto - Direct

1 chose. For example, we could choose "delivery" because Eaze  
2 was a delivery service.

3 Q. Did he say anything about merchant names in the context of  
4 high-risk credit card processing?

5 A. He talked about what would go on the customer statement.

6 Q. What did he say about that?

7 A. He said that we couldn't use "Eaze." I wasn't quite clear  
8 as to why we couldn't, but one of the names that was mentioned  
9 at that time in the meeting, I think through a brainstorming  
10 session, was Easy Delivery as an option that could be put. He  
11 said it was important for the customer to recognize the  
12 transaction so that they didn't issue a chargeback, but that it  
13 shouldn't be Eaze exactly.

14 Q. And so you said he said it was important for the customers  
15 recognize it so they didn't institute chargebacks, right?

16 A. Yes.

17 Q. Did he say anything else about chargebacks in the context  
18 of high-risk processing?

19 A. I don't remember specifically if he said anything about  
20 chargebacks. I know that chargebacks are something that Jim  
21 had mentioned in the past in the company as the reason that  
22 credit cards came down on Eaze. So from what I remember, at  
23 least for me, is something the company definitely wanted to  
24 avoid.

25 Q. And did Ray say anything about fees in the high-risk credit

L3GPWEI4

Cozzetto - Direct

1 card processing context?

2 A. He did mention to the dispensaries that fees would be  
3 higher for high risk.

4 Q. Did Ray say anything about how he knew all this about  
5 high-risk credit card processing?

6 MR. GILBERT: Objection.

7 MR. TAYBACK: Join.

8 THE COURT: Overruled. But, counsel, we're going to  
9 need to break in another couple of minutes for lunch, but the  
10 witness may answer the question.

11 Q. The question was whether he said anything about how he knew  
12 all of this about high-risk credit card processing?

13 A. He mentioned that he'd been in the industry for quite a  
14 while. I don't recall exactly if he gave specific examples of  
15 how he knew, but I remember being very impressed with his  
16 knowledge.

17 Q. Did Ray talk at all about risk to the parties at the  
18 meeting?

19 A. Yes, he did.

20 Q. What did he say?

21 A. He told us that everyone in the room should understand that  
22 there was a risk to the solution he was presenting; that he was  
23 pretty confident that, for everyone that wasn't him, the risk  
24 was pretty low. I remember him talking about, on a scale of  
25 one to ten, we would be more on the one side; he would be more

L3GPWEI4

Cozzetto - Direct

1 on the upper, eight, nine or ten side.

2 But -- and that he couldn't, you know, make the  
3 decision for everyone. So he wanted to make sure that people  
4 understood, but in his experience, it was a pretty low risk.

5 Q. And when he was talking about this, the risk, you know, to  
6 some, to the dispensaries on one side being a one but higher  
7 for him, what was your understanding of what risk he was  
8 referring to?

9 A. My understanding was he was referring to the risk of  
10 getting caught, the risk of, you know, working in an illegal  
11 environment.

12 Q. And did Ray mention the government at any point during this  
13 meeting?

14 MR. GILBERT: Objection to leading.

15 THE COURT: Overruled.

16 Q. You can answer.

17 A. Okay. Thank you. He mentioned that he was already on the  
18 federal government's radar.

19 MS. DEININGER: Your Honor, I think this might be a  
20 good time for us to take our break.

21 THE COURT: Okay. So, ladies and gentlemen, when you  
22 come back from lunch, we're going to interrupt this witness and  
23 take another witness, and the reason for that is the other  
24 witness is going to be testifying remotely, and we have to set  
25 up some equipment for that, and then we'll take that down and



L3GPWEI4

Cozzetto - Direct

1 return to this witness. So it's just purely a scheduling  
2 issue, nothing more. So have a good lunch and we'll see you in  
3 an hour.

4 (Jury not present)

5 You may step down. We'll see you as soon as we finish  
6 the other witness.

7 THE WITNESS: Thank you.

8 (Witness temporarily excused)

9 THE COURT: All right. Anything anyone needs to raise  
10 with the Court?

11 MR. FOLLY: No, your Honor.

12 MR. TAYBACK: No, your Honor.

13 MR. GILBERT: No, your Honor.

14 THE COURT: See you in an hour.

15 (Luncheon recess)

16 (Continued on next page)

L3GAWEI5ps

A F T E R N O O N   S E S S I O N

1:55 p.m.

(Jury not present)

THE COURT: I see a screen with a number of people.  
Who is the witness? Will the witness raise his hand. Can you  
hear me?

THE WITNESS: Yes.

THE COURT: Very good. We'll get started in a minute.  
You can put your hand down.

THE WITNESS: OK.

MR. BURCK: Your Honor, Bill Burck for Mr. Akhavan. I  
just wanted to note for the logistics for us on  
cross-examination, we have a paralegal who is present with the  
witness so we can provide him exhibits as we offer it to him,  
so that's why you may see another person there. It's just  
for --

THE COURT: Thank you.

MR. HARID: Same here for Mr. Weigand. We have a  
paralegal as well.

THE COURT: You guys are just sparing no expense.  
That's fine. That's good.

So two of my three daughters are paralegals, but  
they've recovered.

Assuming the government goes into Thursday, are you  
going the whole day?

L3GAWEI5ps

Elliott - Direct

1 MS. LA MORTE: I would say probably through the  
2 morning and then we would probably free up after lunch.

3 THE COURT: So defense counsel should be ready with  
4 their first witness for later on Thursday.

5 MR. BURCK: Yes, your Honor.

6 MS. LA MORTE: Has your Honor decided when it wants to  
7 hold a charging conference?

8 THE COURT: I think probably Friday evening.

9 MS. LA MORTE: OK.

10 (Jury present)

11 THE COURT: Ladies and gentlemen, can everyone see the  
12 witness?

13 Mr. Elliott, just raise your hand again to make sure  
14 everyone can see him.

15 Very good. Please raise your hand once more.

16 MARTIN ELLIOTT,

17 called as a witness by the government,

18 having been duly sworn, testified as follows:

19 THE COURT: OK. Counsel.

20 DIRECT EXAMINATION

21 BY MS. DEININGER:

22 Q. Good afternoon, Mr. Elliott.

23 A. Good morning.

24 Q. You're right. You're in California. It's morning. Right?

25 Good morning.

L3GAWEI5ps

Elliott - Direct

1           Since we're doing this by video, I just want to  
2 confirm, you can see me and hear me, right?

3 A. I can, yes.

4 Q. And can you also see an individual in the "Defendant 1"  
5 screen?

6 A. I can see from his chin up, yes.

7 Q. OK. And can you also see an individual in the "Defendant  
8 2" screen?

9 A. I can.

10           Yes, from his tie up, so we're good there.

11 Q. Can you see the judge on your screen?

12 A. I can see the judge, yes.

13 Q. And can you also see -- I do know it might be a little  
14 smaller and a bunch of them on a single screen, but can you  
15 also see the members of the jury?

16 A. I can, yes.

17 Q. You can, all right. Good.

18           Mr. Elliott, where do you work?

19 A. I work for Visa.

20 Q. And how long have you worked at Visa?

21 A. It will be 23 years in June.

22 Q. Can you describe what Visa is?

23 A. Visa is the world's largest global payment system operator.  
24 We provide credit and debit products to consumers and  
25 acceptance ability to merchants.

L3GAWEI5ps

Elliott - Direct

1 Q. And was does it mean to be a payment system operator?

2 A. So what Visa does is, we provide the ability for consumers  
3 to pay for business services with credit and debit products,  
4 and we also provide the ability for merchants to accept those  
5 credit and debit products for payment for their business  
6 services. So we enable commerce around the world.

7 Q. And drawing your attention to the 2016 to 2019 time period,  
8 what was your role at Visa?

9 A. I was the local head of a group called Franchise Risk  
10 Management.

11 Q. Can you describe generally your duties and responsibilities  
12 in that role.

13 A. Sure. So I set policy and provide guidance and oversaw the  
14 administration of compliance programs that dealt with merchants  
15 and acquiring banks that may generate excessive fraud,  
16 excessive chargebacks, or if they were introducing illegal  
17 activity into the payment system.

18 Q. What was the primary goal of the team you oversaw?

19 A. The primary goal is to really protect the integrity of the  
20 payment system from illegal or brand-damaging activity or the  
21 activities that really damaged our consumers' expectation of  
22 using the legal services.

23 Q. So in the course of your job at Visa, have you become  
24 familiar with how credit and debit transactions are processed  
25 in the Visa network?

L3GAWEI5ps

Elliott - Direct

1 A. I am, yes.

2 Q. And are you familiar with the various roles of the entities  
3 that participate in the Visa network?

4 A. I am.

5 Q. Mr. Elliott, can you describe for the jury who the primary  
6 players in the Visa network are?

7 A. Sure. So we like to describe the participants as being  
8 part of a four-party model, and so the first party would be  
9 card issuing banks. These are predominantly financial  
10 institutions, banks like Chase, Wells Fargo, Citibank, that  
11 issue credit cards or debit cards directly to consumers.

12 The second party, which is tied to the issuing banks,  
13 would be the cardholder or the consumers. And these are the  
14 individuals that would hold the Visa product in their wallet  
15 and use it to pay for business services.

16 Then the third party would be what we call merchant  
17 acquiring banks, or acquirers. They are typically also  
18 financial institutions. One of the largest in the country is  
19 Paymentech, Bank of America, Wells Fargo. But what they do is,  
20 they have a relationship with merchants and they provide the  
21 merchants the ability to accept Visa transactions.

22 And then lastly, the other important party in that  
23 model would be the merchants themselves. And so, for example,  
24 merchants would be like Amazon.com, Wal-Mart, Home Depot,  
25 Target. They accept Visa payment products, and they work with

L3GAWEI5ps

Elliott - Direct

1 acquiring banks. So that's the fourth part of the model.

2 Q. I think -- I want to make sure -- one example you gave was  
3 Bank of America, right?

4 A. Correct.

5 Q. And Wells Fargo?

6 A. Yes.

7 Q. And Citibank?

8 A. They are part of Citibank, yes.

9 Q. And did you say they are also -- they can also play a role  
10 of acquiring banks?

11 A. They can, and oftentimes these are larger financial  
12 institutions. Issuers and acquirers will perform a similar  
13 role. The Wells Fargo issues and acquirers -- it issues and  
14 acquires. Bank of America issues and acquires.

15 Q. And so, in this model, what is the role of Visa?

16 A. So Visa's role is, we're in the center of this, and you can  
17 think of us as an electronic super highway. We provide all of  
18 the technology and the systems to allow issuers and acquirers  
19 to communicate on a 24/7 basis every day around the world. So  
20 we provide the infrastructure that enables the authorization,  
21 the clearing, and the settlement of these transactions.

22 We also set the rules to enable commerce. We set  
23 rules for the issuers and for the acquirers.

24 We also provide, you know, fraud mitigation rules,  
25 everything they need to support the infrastructure.

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Elliott - Direct

1 Q. What do you mean by "fraud mitigation rules"?

2 A. We also provide tools to issuers and acquirers that help  
3 them identify fraudulent transactions so that they can decline  
4 them if need be.

5 Q. OK. I think you said a minute ago that acquiring banks  
6 sponsor merchants in the system; is that right?

7 A. Three do, yes.

8 Q. What does that mean?

9 A. What I mean by "sponsor" is, acquirers are directly  
10 responsible for signing merchants. Visa, we have typically  
11 have relationships, contractual relationships with merchants.  
12 So in order to accept Visa, a bank would have to sign them up  
13 and contractually obligate them to follow the rules. And then  
14 the acquirers also typically provide the acquiring bank the  
15 technology they need to connect into the payment system. So,  
16 for example, it could be as simple as a terminal that connects  
17 them into the payment system.

18 Q. OK. And one of the -- what steps in this -- does an  
19 acquiring bank take when signing up a merchant on the system?

20 A. So what they typically do is, it all starts with a merchant  
21 application. So they receive applications from merchants.  
22 They review the applications. And they conduct a due diligence  
23 review of the merchant, to try to identify the level of risk  
24 that the merchant represents.

25 Q. Are you familiar with merchant category codes?



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1 A. I am, yes.

2 Q. What are they?

3 A. A merchant category code is -- we also call it an MCC --  
4 but essentially it's a four-digit numeric number that describes  
5 the industry that the merchant operates within, and merchant  
6 category codes are standard industrial codes that are set by  
7 ISO, meaning Industry Standards Organization. So they  
8 essentially identify the type of industry the merchant is  
9 operating with.

10 Q. And who did you say sets those codes?

11 A. ISO is the Industry Standards Organization, is the group  
12 that, you know, Visa and MasterCard go to if we need to set up  
13 a new MCC.

14 And so we -- we, Visa -- follow merchant category  
15 codes, but they're related to ISO SIC codes, standard  
16 industrial codes.

17 Q. And so those MCC codes you just talked about, are those  
18 just used by Visa, or are they used more broadly?

19 A. Visa and MasterCard both use the same merchant category  
20 codes.

21 Q. Do acquiring banks have responsibilities with regard to MCC  
22 codes?

23 A. They are responsible for assigning the MCC codes to the  
24 merchant when they set them up in their system.

25 Q. Does every merchant have to have an MCC code?

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Elliott - Direct

1 A. They do, yes.

2 Q. Why?

3 A. Well, the merchant category code is a field that's  
4 transmitted during the authorization process, and essentially  
5 the MCC -- well, it's twofold. The acquirer needs to  
6 understand what industry the merchant is so they can evaluate  
7 the risk. And then the card issuing bank that is charged with  
8 authorizing the transaction also needs to know what industry  
9 the merchant is part of, as part of their decision-making  
10 process.

11 Q. And what role does that play, to your understanding, in the  
12 issuing bank's decision-making process?

13 A. Issuing banks typically use fraud claim technology or what  
14 we also call neural networks to score the individual  
15 transaction based on the risk it presents. And what they try  
16 do is understand what is the normal behavior for an individual  
17 consumer. And so the risks presented by industries can be very  
18 different. The risk of a restaurant transaction may be very  
19 low. The risk of, let's say, a cruise or airline transaction  
20 could be higher. And so they want to use the type of industry  
21 in their decision-making role before they authorize a client  
22 transaction.

23 Q. Is there an MCC code for marijuana?

24 A. No, there isn't.

25 Q. And to your understanding, why not?

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1 A. The MCC codes are set up by the overall industry, and so  
2 the MCC code that we have that most approximates that is the  
3 one for pharmacies, pharmacies and drugstores.

4 Q. What's your understanding as to whether marijuana sales are  
5 legal under federal law?

6 A. My understanding is that they're illegal under federal law.

7 Q. And are there generally MCC codes for illegal industries?

8 A. No. We don't have an MCC code for illegal industries.

9 Q. Or an illegal product?

10 A. Or illegal products, no.

11 Q. And do acquiring banks have responsibility with regard to  
12 the legality of a merchant's products or services?

13 A. They do, yes. Our rules require that transactions entering  
14 the payment system be legal in both the buyer's and the  
15 seller's jurisdiction.

16 Q. And what's the -- sorry.

17 A. I'm sorry. The acquirer's role is to make sure that the  
18 merchants comply with the rules.

19 Q. And why do the acquiring banks have that responsibility?

20 A. Well, simply because they're the entity that directly signs  
21 them and sponsors them into the payment system, so they have a  
22 direct due diligence, know-your-customer obligation to  
23 understand what the merchant does, how they do it, and to make  
24 sure that they're not bringing anything harmful or problematic  
25 into the payment system.

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Elliott - Direct

1 Q. And what responsibilities does the merchant have as part of  
2 when it's being onboarded by an acquiring bank?

3 A. Their responsibility is to make sure that they completed  
4 the merchant application and any documentation requirements  
5 requested by the acquiring bank in an accurate manner.

6 Q. And just to be clear, in this four-party system that you  
7 described, who are Visa's actual clients?

8 A. So Visa's actual clients are the acquiring banks that are  
9 direct members of Visa and also the card issuing banks that are  
10 in effectively obligated to do so. Issuers and acquirers.

11 Q. Beyond the different players you already described, are  
12 there other people, other entities that can be involved in the  
13 Visa payment system?

14 A. There are. And oftentimes acquirers and issuers will use  
15 independent sales organizations to, you know, expand their  
16 marketing outreach efforts.

17 Q. Are independent sales organizations also referred to as  
18 ISO?

19 A. They are, yes.

20 Q. And what are some of the potential roles for an ISO?

21 A. ISOs, they do a number of things. One of their more  
22 prolific activities is to source new merchant applicants for  
23 acquiring banks, so like a sales and marketing arm of the bank.  
24 They also provide fraud reduction technology. They may help  
25 with back-office processing and chargebacks. You know, they

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1 help support the merchant in their activities to accept Visa  
2 transactions.

3 Q. Have you ever heard of offshoring?

4 A. I have, yes.

5 Q. What is offshoring?

6 A. "Offshoring" is a term often used that refers to situations  
7 where merchants that are going to be problematic or may not be  
8 welcome in their home markets, where they try to move their  
9 businesses offshore, they work with agents offshore to find  
10 acquirers that may be willing to take their activity.

11 Q. And what might a merchant to do to get an offshore account  
12 if they haven't been able to get one in their home market?

13 A. Well, in my experience, offshoring is often with merchants  
14 that know they can't get an account in a marketplace where they  
15 should reside and work with agents or ISOs, and they'll put up  
16 multiple accounts offshore, and they'll often set them up using  
17 different names and perhaps different principals, but they  
18 simply keep their accounts operating and going.

19 Q. So switching to a different topic for a minute,  
20 Mr. Elliott, when a cardholder makes a purchase using their  
21 credit or debit card, what information about the transaction is  
22 transmitted to Visa?

23 A. So there is a merchant descriptor that includes a number of  
24 transaction fields, and predominantly what they include is the  
25 acquiring BIN -- that's the bank identification number -- that

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1 identifies the acquirer that processed the transaction.

2 There's also the merchant's name field, and this is the name  
3 that appears on the cardholder's statement when they see their  
4 bill at the end of the month. There's also a city field that  
5 identifies the city, the state, the merchant category code,  
6 obviously the date, the transaction amount. And there's  
7 typically a country code as well, which country it's in. But  
8 when these transactions are transmitted to Visa, we in turn  
9 shift them to the issuing bank.

10 Q. Is there any additional information included for  
11 card-not-present transactions?

12 A. We do have point-of-sale condition codes, which are values  
13 that identify whether it's a card-present transaction or a  
14 card-not-present transaction, which could be internet or  
15 mail/phone order.

16 Q. OK. I think you -- I was just going to ask, what is a  
17 card-not-present transaction? What does that mean?

18 A. "Card not present" means the card -- the cardholder was not  
19 physically present when the transaction was consummated. And  
20 so typically today that means an internet transaction or a  
21 mail-order transaction.

22 Q. And so what happens after Visa receives information about  
23 an individual transaction?

24 A. So what I may have said earlier on is, you can think of  
25 Visa like a big electronic switch. And so when an -- when a

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1 transaction comes in from a merchant to an acquirer, the  
2 acquirer routes it to Visa. And then we immediately route that  
3 transaction to the cardholder's card issuing bank so that they  
4 can decide whether or not they want to approve it or decline  
5 it.

6 And then once that card issuing bank either approves  
7 it or declines it, we route that response back to the issuer,  
8 to the acquirer, and the acquirer in turn to the merchant.

9 Q. And how long does that process generally take, from when a  
10 Visa cardholder uses his or her card to when the transaction is  
11 approved or declined?

12 A. It's typically nanoseconds.

13 Q. How many transactions are processed through the Visa  
14 network in any given period of time?

15 A. It's about 500, 500 to 600 million a day.

16 Q. The information that the issuing bank receives about the  
17 transaction, is that generally the same as the information that  
18 Visa receives?

19 A. It is, yes, because it went from the acquiring bank to Visa  
20 and Visa routes it to the issuing bank. So it's the same.

21 Q. So I want to focus on some of the information you mentioned  
22 that Visa receives that relates specifically to the merchant.  
23 And by that I mean the merchant name, the location, and the MCC  
24 code. That's all part of the transaction information that Visa  
25 receives, right?

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1 A. It is.

2 Q. And that the issuing bank receives, right?

3 A. It is.

4 Q. So as a general matter, is it important to Visa that those  
5 pieces of information be accurate?

6 A. It is, yes.

7 Q. Can you tell me why?

8 A. Well, first off, in order to make sure that merchants are,  
9 you know, following the rules, we would assume that the  
10 information on the merchant application that the acquirer used  
11 to enter the system was accurate. And then ultimately, as the  
12 transaction information is routed from the acquirer to Visa to  
13 the issuer, the issuer is going to need to make a decision to  
14 authorize or decline the sale. And we would -- in order for  
15 them to make the right decision or a good decision, and to take  
16 advantage of the risk-scoring models that they use, they need  
17 to have accurate information. So the name should be accurate,  
18 the MCC should be accurate, the country from which it came  
19 should be accurate so they could, you know, evaluate those  
20 different factors in an accurate manner.

21 Q. Are you familiar with a practice called "miscoding"?

22 A. Yes.

23 Q. What is "miscoding"?

24 A. "Miscoding" is a term used in the industry to describe when  
25 a merchant said -- it's using a merchant category code that



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1 does not accurately describe their business. So an example of  
2 that might be an internet gambling merchant that is described  
3 as an electronics store. They're concealing the fact that  
4 they're actually a gambling merchant.

5 Q. And what's your understanding of why a merchant might  
6 engage in miscoding?

7 A. Oftentimes it's to conceal the actual activity. It usually  
8 starts with, they don't want the acquiring bank that they're  
9 working with to know what they really do. And then it also,  
10 you know, in some instances, merchants realize that issuers  
11 would decline their transaction if they knew what they were up  
12 to.

13 Q. And based on your experience, what would a merchant engaged  
14 in illegal activity do to prevent miscoding from being  
15 discovered?

16 MR. BURCK: Objection, your Honor.

17 THE COURT: Sustained.

18 Q. Generally speaking, who bears the risks that arise from  
19 miscoding?

20 A. Well, first the acquirer bears the risk, because if they've  
21 signed a merchant entity that they wouldn't have otherwise  
22 signed that they deem to be high risk, the acquirer absolutely  
23 has risk in it, for anything that may go wrong with that  
24 relationship. Visa, secondarily, can have risk in it, if  
25 illegal activity gets into the system. And then also the card

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1 issuing bank who authorizes the transaction, if they're  
2 approving something that's not legal or that their fraud model  
3 should have picked up and declined, then they have potential  
4 exposure as well.

5 Q. And in your experience, are there steps that you have seen  
6 merchants engaged in miscoding take to prevent that miscoding  
7 from being discovered?

8 A. Yes.

9 Q. And what are those?

10 A. The steps that I see most frequently are merchants that  
11 want the miscode, who oftentimes follow the offshoring model,  
12 which is multiple -- setting up relationships with multiple  
13 acquiring banks, using multiple names, in the wrong MCC. And  
14 the whole goal is to establish as many merchant accounts as it  
15 takes to stay open and to avoid being shut down if one acquirer  
16 conflicts.

17 Q. So going back to the transaction process, and let's assume  
18 that a transaction has been approved. Can you describe the  
19 money flow for that approved transaction?

20 A. Sure. Assuming that the transaction was approved, what  
21 happens, typically, is, at the end of the business day, the  
22 acquiring bank is going to submit all of their transactions  
23 that were approved that day for the merchant into Visa, into  
24 our clearing and settlement process. And what happens is, we  
25 receive the transaction from the acquiring banks. We then

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1 immediately go out to all of the various card issuing banks,  
2 whose cardholders, you know, engaged in activity that day. And  
3 we bill, or debit, the card issuing banks for all of the  
4 activity that their cardholders engaged in for that day. So we  
5 bill the issuers, we take the money from the issuers' accounts,  
6 and then we turn around and we pay the acquiring bank the  
7 proceeds that are due to them for their merchant sales for that  
8 day. We call that our clearing and settling process, where we  
9 pay the acquirers and the acquirers in turn pay the merchants.

10 Q. OK. I think you might have already mentioned this but just  
11 to be clear, when Visa goes and bills or debits for the  
12 settlement process, whose account do they take the money out  
13 of?

14 A. When we bill the issuers, we take it out of an account that  
15 the issuer holds. We bill the issuer's d/b/a.

16 Q. So in the course of your employment at Visa, have you  
17 become familiar with Visa's policies and practices pertaining  
18 to illegal transactions?

19 A. Yes.

20 Q. Can you describe for me generally what your familiarity  
21 with those policies and practices is based on.

22 A. Sure. So as the global head of franchise risk management,  
23 I've shaped the policy around our compliance program, shaped  
24 the development, updated it. I've enforced the compliance  
25 programs for a number of years around the world. I'm very

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1 familiar with how they operate, and I've implemented them.

2 Q. So does Visa have rules regarding illegal transactions?

3 A. We do, yes.

4 Q. And can you tell me at a high level what is Visa's rule  
5 regarding illegal transactions?

6 A. The fundamental rule states something like, transactions  
7 must be legal in both the buyer and the seller's jurisdiction.  
8 So, for example, if a cardholder in Germany is buying something  
9 from a merchant in New York, whatever that product or service  
10 is, it needs to be legal in Germany and in New York, not just  
11 one side.

12 Q. And why does Visa have this fundamental rule?

13 A. Well, we operate a global payment system in almost 200  
14 countries around the world, and so we have an obligation to  
15 make sure that we're compliant with the rules in all those  
16 countries. And so the best way to do that is to make sure the  
17 transactions are legal in both the buyer's and seller's  
18 jurisdiction.

19 Q. And what's the purpose of the rule?

20 A. The purpose of the rule is to make sure that Visa complies  
21 with applicable laws, whether they be in U.S., Canada, or  
22 Europe, or anywhere, really, and to meet our own regulatory  
23 obligation.

24 Q. Now, you mentioned, I think you mentioned "regulatory  
25 obligation." Generally what are you referring to there?

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1 A. Well, Visa is regulated by federal banking regulators, and  
2 we have an obligation to comply with the laws of this country  
3 and the others that we operate within. And so we want to make  
4 sure that we're a good corporate system and compliant with the  
5 rules that apply to us and to our clients.

6 Q. So what is Visa's position specifically regarding  
7 U.S.-based transactions involving the sale of marijuana  
8 products?

9 A. Our position is that they're prohibited on the Visa network  
10 because they're prohibited by federal law.

11 MS. DEININGER: Your Honor, at this time I'd like to  
12 offer into evidence a self-authenticating document,  
13 Government's Exhibit 2201 through 2204, 2208, 2216, 2217, and  
14 2221 through 2232.

15 THE COURT: Any objection?

16 MR. BURCK: No, your Honor.

17 MR. HARID: No, your Honor.

18 THE COURT: Received.

19 (Government's Exhibits 2201 through 2204, 2208, 2216,  
20 2217, and 2221 through 2232 received in evidence)

21 MS. DEININGER: Mr. Levine, can you publish for  
22 everyone here in the courtroom what's in evidence as Government  
23 Exhibit 2216.

24 Q. And Mr. Elliott, you, I believe, should have a binder of  
25 documents in front of you.

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1 A. There's two binders. So --

2 Q. If you can look in that binder for Government Exhibit 2216.

3 Mr. Levine, you can pull it up for everyone here.

4 Let me know when you see it, when you've found that.

5 A. I found it.

6 Q. OK. So Mr. Elliott, do you recognize Government Exhibit  
7 2216?

8 A. I do, yes.

9 Q. And what is it?

10 A. This was an internal memo that Visa created to address  
11 marijuana acceptance and other questions that we were getting  
12 from client banks at the time.

13 Q. This says "issues brief" up at the top, right?

14 A. Yes.

15 Q. Generally what is the purpose of an issues brief at Visa?

16 A. The purpose of an issues brief in this document is  
17 basically to disseminate our position on a given subject and to  
18 help our account executive answer questions that client banks  
19 may be posing to them, given something that may be going on at  
20 the time.

21 Q. Do you see there's a date in red at the top right? Can you  
22 read that for me?

23 A. It was dated May 26, 2015.

24 Q. What is the title? What does it say after "issues brief"?

25 A. "Visa Acceptance at Marijuana Dispensaries."

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1 Q. Now I want to look down the first page a little bit, to the  
2 paragraph that starts "in 2015." Can you just read that for  
3 me.

4 A. The fourth paragraph?

5 "In 2015, Visa was advised by a credit union that the  
6 credit union intended to issue corporate cards to marijuana  
7 dispensaries where such businesses were legal under state law.  
8 In addition, Visa received several inquiries from other  
9 financial institutions that were interested in serving the  
10 marijuana industry. These inquiries prompted Visa's risk and  
11 legal departments to review the state of law and policy with  
12 respect to marijuana. Since marijuana is still illegal at the  
13 federal level, Visa determined that it cannot process marijuana  
14 transactions until such time as they are permissible under  
15 federal law."

16 Q. Thank you.

17 And now we can turn to page 2. There is a section  
18 here that just says "Visa statement." What does it mean when  
19 it says "Visa statement"? What does that represent?

20 A. That is a statement that we would use if we were involved  
21 in any media inquiry.

22 Q. And can you read the statement. What does it say here?

23 A. All right. It says, "'In offering our payment service,  
24 Visa adheres to the rule of law and seeks to prevent our  
25 network from being used for unlawful purposes. Although the

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1 federal government previously announced it will not challenge  
2 state laws that legalize and regulate marijuana sales,  
3 marijuana nevertheless has remained illegal under federal law.  
4 Such transactions are not permitted on the Visa network until  
5 such time as federal law allows otherwise.'"

6 Q. Thank you. And now I want to have you turn to what's in  
7 evidence as Government Exhibit 2204.

8 MS. DEININGER: And, Mr. Levine, if you can pull that  
9 up for everyone in the courtroom.

10 Q. Mr. Elliott, let me know when you have it.

11 A. OK. I'm there.

12 Q. OK. Do you recognize this?

13 A. I do, yes.

14 Q. What is it?

15 A. This is the presentation that one of our staff members gave  
16 at one of our security summits.

17 Q. At the top it says "Visa Security Summit 2019." What is  
18 the Visa security summit?

19 A. So a Visa security summit is an industry event we held back  
20 in 2019 here in San Francisco, and it's an event we hold -- we  
21 try to hold them every two years with our clients to update  
22 them on issues and to address emerging risks and threats, and  
23 basically it's a client outreach and engagement effort.

24 Q. Who do you understand attends the Visa security summits?

25 A. Card issuing banks, merchant acquiring banks, and their



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1 agent if they wanted to bring them along.

2 Q. And what's the title of this particular presentation?

3 A. The title is "Cannabis and Hemp-Derived Products."

4 Q. And what was the date? When was this presentation given?

5 A. August of 2019.

6 Q. Do you see -- who is the presenter?

7 A. Elizabeth Scofield.

8 Q. And I think you mentioned that at the time she was a member  
9 of your team?

10 A. Yes.

11 Q. So what was her role in Visa?

12 A. She was head of policy for the BRAM protection team, under  
13 my watch.

14 Q. Did you review this presentation before it was presented at  
15 the Visa security summit?

16 A. Yes.

17 Q. So just for clarity, you can flip through that document  
18 quickly and tell me, is this a full presentation or just an  
19 excerpt?

20 A. It's just two pages of it.

21 Q. It's just an excerpt, right?

22 A. It's an excerpt, yes.

23 Q. So what was the purpose of this presentation?

24 A. Given the questions that had come in from the acquiring  
25 industry about marijuana transactions, we wanted to educate the

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1 acquiring members and their ISOs on Visa's position and give  
2 them an update on the things that were, you know, transpiring.  
3 It's basically an education and question-and-answer session.

4 Q. OK. Let's turn to the next page. Do you see where it says  
5 "Visa policy: marijuana"?

6 A. I'm there.

7 Q. Can you just read that for me.

8 A. Are you talking about the two bullet points or the  
9 quotation below?

10 Q. The whole thing really.

11 A. OK. The first bullet point reads, "Despite the number of  
12 states that have legalized the purchase and sale of marijuana  
13 to some degree, marijuana remains illegal under federal law."

14 The second bullet reads, "Visa's official position on  
15 transactions involving the purchase or sale of marijuana in the  
16 U.S. is as follows" -- and then there's a quote. Here comes  
17 the quote. "'In offering our payment services, Visa adheres to  
18 the rule of law and seeks to protect the integrity of the Visa  
19 payment system. Although several U.S. states have legalized  
20 marijuana for medical or recreational use, marijuana  
21 nevertheless remains illegal under federal law.'" And then  
22 it's listed in bold: "'As such, Visa prohibits all transactions  
23 involving the sale or distribution of marijuana until such time  
24 as federal law allows.'"

25 That's it.

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1 Q. So was this Visa's position with regard to marijuana  
2 transactions for the entirety of the period between 2016 and  
3 2019?

4 A. It was, yes.

5 Q. Were there any material changes to that policy with regard  
6 to marijuana transactions in that time period?

7 A. No.

8 Q. So now I want to ask you to look in your binder for what's  
9 marked as Government Exhibit 2217.

10 MS. DEININGER: Mr. Levine, you can pull that up,  
11 since it's in evidence, for everyone here.

12 A. OK. I'm at 2217.

13 Q. OK. Great. So you recognize that?

14 A. I do, yes.

15 Q. What is it?

16 A. This is another internal communication for our internal  
17 staff to help answer client questions.

18 Q. OK. Were you the author of this internal communication?

19 A. I probably was one of the primary authors of it.

20 Q. Do you see where it says "from" -- is that a --

21 A. Oh, yeah. There I am. Sure. Yeah.

22 Q. What is the date of this document?

23 A. May 3, 2019.

24 Q. And what's the title up at the top?

25 A. "Visa Acceptance for Marijuana and CBD Sales."

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1 Q. So directing your attention to the first two paragraphs  
2 under "Marijuana," do you see that?

3 A. I do.

4 Q. Is this --

5 A. Yes.

6 Q. Is this, in all material respects, the same position that  
7 we just read in the issues brief in the Visa security summit  
8 presentation?

9 A. It is, yes.

10 MS. DEININGER: We can zoom out of that.

11 Q. Right below the quote, do you see the paragraph below the  
12 quote? Can you read the first two sentences of that paragraph?  
13 It starts with "Visa operates."

14 A. "Visa operates the Global Brand Protection Program to  
15 ensure acquirers do not submit illegal or brand-damaging  
16 transactions into the payment system. Acquirers identified as  
17 entering illegal marijuana transactions into the payments  
18 system may be identified by the program and become subject to  
19 noncompliance assessments. Please direct any questions about  
20 the GBPP to Elizabeth Scofield." And then there's an email  
21 address.

22 Q. So let's go to the second page. There's a section at the  
23 bottom called "frequently asked questions." Do you see that?

24 A. I do.

25 Q. Can you read the first frequently asked question, the

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1 question and answer.

2 A. The first question is, "If state law allows marijuana  
3 sales, why does Visa prohibit the transactions?"

4 The answer is, "Marijuana remains illegal at the  
5 federal level."

6 Q. And then do you see --

7 MS. DEININGER: Mr. Levine, you can zoom out of this.  
8 And if you go to the next table, the question and answer that  
9 goes from the second to third page.

10 Q. Can you read that one, the next question and answer.

11 A. "What if a marijuana" --

12 Q. No, sorry. It says starts "are debit transactions."

13 A. I'm sorry. It's at the bottom -- OK, I got it.

14 "Are debit transactions OK for the sale of marijuana?"

15 The answer is, "No, Visa prohibits all transactions  
16 involving the purchase and sale of marijuana from being entered  
17 into the Visa payment system."

18 Q. And then there's a question and answer right below that  
19 that starts "what if a merchant." Can you read that one as  
20 well.

21 A. Yes. The question reads, "What if a merchant is selling a  
22 gift card, certificate, or voucher that can be used to purchase  
23 marijuana?"

24 Answer: "Visa prohibits all transactions involving the  
25 purchase and sale of marijuana. Disguising the transaction as

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Elliott - Direct

1 a gift card or other quasi cash sale violates Visa rules."

2 Q. Thank you.

3 I'd now like to have you turn, then, switching topics  
4 a little bit, I'd like to have you turn to what's been marked  
5 in evidence as Government Exhibit 2208.

6 MS. DEININGER: And, Mr. Levine, you can pull that up  
7 for everyone in the courtroom.

8 Q. Let me know when you have it.

9 A. That's not in the binder?

10 OK. Thank you.

11 I think we have it up. It looks like the Visa rules?

12 Q. That's right. It should say "Visa core rules and Visa  
13 product and service rules." Do you have that in front of you?

14 A. Yes.

15 Q. Does it have a date about two thirds of the way down the  
16 page that says 15 October 2016?

17 A. It does, yes.

18 Q. OK, great. So what is it?

19 A. This is a section from the Visa rules booklet that we  
20 distribute to our clients.

21 Q. Do you see at the top, does it have a yellow sticker or  
22 electronic sticker that says "Government Exhibit 2208"?

23 A. It does.

24 Q. OK. I just want to make sure we're all looking at the same  
25 document.

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1 OK. So, sorry, tell me, what is this?

2 A. These are the Visa core rules that our clients are  
3 obligated to enforce and comply with.

4 Q. And what generally is the purpose of Visa's core rules?

5 A. The rules provide the guideline and the -- they support the  
6 infrastructure to allow acquirers and issuers -- to allow them  
7 operate a global payment system across 200-plus countries. You  
8 know, without the rules, you know -- basically it's a standard  
9 of care and the expectation that acquirers are supposed to  
10 follow and issuers as well, so that we have a functioning  
11 payment system that works and isn't just turning to chaos  
12 because everything is what it was.

13 (Continued on next page)

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1 Q. Does Visa regularly update its core rules?

2 A. We do, yes.

3 Q. How often?

4 A. We update them twice a year, in April and in October.

5 Q. So focusing on the time period between 2016 and 2019, was  
6 there a version of Visa's core rules in effect during that  
7 entire time period?

8 A. Yes, there was.

9 Q. So I'd like to go to page 39 of this document. It should  
10 be marked at the bottom for you as nine of the Visa rules?

11 A. Well, okay. Yes, we're there.

12 Q. All right. Do you see where it says: Introduction to the  
13 Visa core rules and Visa product and service rules; about four  
14 lines from the top?

15 A. Yes, I do see that.

16 Q. Can you read me the two paragraphs underneath that?

17 A. The first paragraph reads: "Visa has established rules  
18 that are designed to minimize risk and provide a common,  
19 convenient, secure and reliable global payment experience,  
20 while supporting geography-specific rules that allow for  
21 variations and unique marketplace needs. They are set and  
22 modified by Visa to support the use and advancement of Visa  
23 products and services, and represent a binding contract between  
24 Visa and each member.

25 The second paragraph reads: The Visa core rules



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1 contain fundamental rules that apply to all Visa system  
2 participants and specify the minimum requirements applicable to  
3 all members to uphold the safety, security, soundness,  
4 integrity and interoperability of the Visa system.

5 Q. So looking at the first sentence in the second paragraph,  
6 it says: Visa core rules contain fundamental rules that apply  
7 to all Visa system participants. What's your understanding of  
8 what it means by Visa system participants? Who's included in  
9 that?

10 A. The parties included would be the acquiring banks, the  
11 issuing banks, the merchants, cardholders and, of course, any  
12 agent that the issuers or acquirers are using to support their  
13 Visa programs.

14 Q. And then just after that, it says that the Visa core rules  
15 specify the minimum requirements applicable to all members to  
16 uphold the safety, security, soundness, integrity and  
17 interoperability of the Visa system. What does it mean --  
18 what's your understanding who the members are?

19 A. Well, the members would be the issuers and the acquirers.

20 Q. Let's go now to page 44 of the PDF. I think the pagination  
21 would be 14 at the bottom for you, Mr. Elliott, CR14 at the  
22 bottom left?

23 A. Yes. I found it.

24 Q. Okay. And then do you see section 1.1.3 titled Applicable  
25 Laws and Conflicts?

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1 A. I see that, yes.

2 Q. The standalone paragraph at the bottom, can you just read  
3 that sentence for me?

4 A. The big paragraph or the second? Did you say the first or  
5 second paragraph?

6 Q. The second one. The one-sentence, standalone paragraph.

7 A. The standalone paragraph reads: A transaction must be  
8 legal in both the cardholder's jurisdiction and the merchant  
9 outlet's jurisdiction.

10 Q. So is this a fundamental rule that you described earlier?

11 A. It is, yes.

12 Q. And what does it mean by "cardholder's jurisdiction"?

13 A. That means that the location where the cardholder is  
14 domiciled.

15 Q. And what does it mean by "merchant outlet's jurisdiction"?

16 A. That means the physical location of where the merchant  
17 outlet is housed.

18 Q. Are Visa core rules publicly available?

19 A. They are, yes.

20 Q. So looking at this fundamental rule, what's your  
21 understanding of how this rule applies to marijuana  
22 transactions in the U.S.?

23 A. Based on the fact that a transaction must be legal in both  
24 the cardholder's jurisdiction and the merchants outlet's  
25 jurisdiction, a marijuana transaction occurring in the United

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1 States would be prohibited.

2 Q. Would it make any difference if the transaction was  
3 conducted in a state that has legalized the sale of marijuana?

4 A. No, it does not.

5 Q. Does it make any difference if the marijuana transaction is  
6 for medical marijuana?

7 A. It does not.

8 Q. Was a version of this rule in place for the entirety of the  
9 period between 2016 to 2019?

10 A. Yes.

11 Q. Were there any material changes made to the rule in that  
12 period?

13 A. No.

14 Q. All right. I'd now like to turn to page 77 of this  
15 document. That's 77 in the PDF. It should say CR47 in the  
16 bottom left -- bottom right. Let me know when you're there.

17 A. We're there.

18 Q. All right. Do you see where it says section 1.5.1.2,  
19 Assignment of merchant outlet location?

20 A. Say that again, please?

21 Q. In the middle of the page it should say 1.5.1.2, Assignment  
22 of merchant outlet location?

23 A. Where is CR77? I don't see that.

24 Q. Sorry. If you're going by the CR number, it should be  
25 CR47.

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1 A. Okay. So that may be a different page. Okay, hang on. CR  
2 what? 47?

3 Q. 47. It's page 77 in the PDF or CR47 on the bottom right.

4 A. Okay. We found it. Yes, Assignment of Merchant Outlet  
5 Location is the title. Is that what you're looking at?

6 Q. That's what I'm looking at, yes.

7 A. Okay.

8 Q. Okay. Go up to the section title -- if you scroll or look  
9 at the very top of the next page, there's a paragraph that  
10 starts: For card-absent environment transactions; do you see  
11 that?

12 A. I do.

13 Q. Can you read that for me?

14 A. For a card-absent environment transaction, the acquirer  
15 must assign the country of the merchant's principal place of  
16 business as the merchant outlet location. The acquirer may  
17 assign additional --

18 Q. You can stop there. Thank you. Is a card -- would a  
19 card-absent environment include online commerce?

20 A. It would.

21 Q. And this reference here, it says that the acquirer must  
22 assign the country of the merchant's principal place of  
23 business as the merchant's outlet location. Is the acquirer is  
24 same as the acquiring bank?

25 A. It is.

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1 Q. So what's your understanding of how this rule would apply  
2 to online merchant whose headquarters and employees are located  
3 in California?

4 A. If the headquarters and employees are in California, the  
5 acquirer should be in the United States, based on the fact that  
6 the merchant's principal place of business is in the United  
7 States and in California.

8 Q. And what should the acquirer assign as the merchant outlet  
9 location for an online company whose headquarters and employees  
10 are in California?

11 A. It should show as California.

12 Q. Was a version of this rule in place for the entirety of the  
13 period between 2016 and 2019?

14 A. I believe it was.

15 Q. And to your knowledge, were any material changes made to  
16 this rule in that period?

17 A. I believe we clarified the rules around the merchant's  
18 principal place of sometime during that period, but I can't  
19 recall when.

20 Q. Going down to the next page, do you see a section 1.5.1.3,  
21 Merchant Qualification Standards?

22 A. Yes.

23 Q. Can you read that for me, through the bullet points?

24 A. Sure. Merchant qualification standards. Before entering  
25 into a merchant agreement, an acquirer or payment facilitator

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1 must ensure that the prospective merchant is all of the  
2 following:

3 Bullet one: Financially responsible;

4 Bullet two: Not engaged in any activity that could  
5 cause harm to the Visa system or the Visa brand;

6 Bullet three: Operating within an allowed  
7 jurisdiction;

8 And bullet four: Effective October 15, 2016, not  
9 misrepresenting its merchant outlet location or locations. The  
10 acquirer --

11 Q. That's okay. Sorry. You can stop there. I just need the  
12 bullets. Thanks. So at the top it says this referred to  
13 entering into a merchant agreement. What is a merchant  
14 agreement?

15 A. A merchant agreement is the merchant application that the  
16 merchant completes when it's applying for acceptance with an  
17 acquiring bank.

18 Q. And also, right after that, it talks about an acquirer or  
19 payment facilitator. Now, I think you already told us that an  
20 acquirer is the same thing as an acquiring bank. What is a  
21 payment facilitator?

22 A. A payment facilitator is a form of merchant -- pardon me,  
23 is a form of agent -- excuse me, is a form of agent that  
24 contracts directly with the acquiring bank and they essentially  
25 provide payment processing services to sponsored merchants.

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1 Q. Would an ISO be a payment facilitator?

2 A. Well, an ISO could be an independent sales organization, or  
3 it could also operate as a payment facilitator. It could be  
4 both.

5 Q. So focusing just on the second bullet, where it says: Not  
6 engaged -- the acquirer or facilitator has to ensure that a  
7 prospective merchant is not engaged in any activity that could  
8 cause harm to the Visa system or the Visa brand.

9 Can you give me some examples of activities that would  
10 cause harm to the Visa system or Visa brand?

11 A. So merchants that are conducting deceptive marketing  
12 operations would be one of those types of problems. Merchants  
13 that are selling illegal goods or services would be another  
14 one. Anyone selling counterfeit goods, that's another one.

15 Q. Sorry, Mr. Elliott. Can you start again with the examples  
16 that you were giving of some times of transactions that could  
17 cause harm to the Visa system or the Visa brand?

18 A. Sure. So some examples would include any type of merchant  
19 engagement in deceptive marketing practices. Merchants that  
20 are selling illegal goods and services, illegal  
21 pharmaceuticals, illegal gambling, you know, counterfeit goods  
22 and services, any of those things would fall into that second  
23 bullet point.

24 Q. So what are the typical things an acquiring bank would do  
25 to confirm that an online merchant that it is sponsoring meets

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1 these criteria?

2 MR. BURCK: Objection, your Honor. Foundation.

3 THE COURT: No, I think the foundation is fine.

4 Overruled.

5 BY MS. DEININGER:

6 Q. You can answer, Mr. Elliott. Let me know if you need me to  
7 repeat the question.

8 A. Sure. If you could repeat it, please.

9 Q. Sure. So what are some typical things that an acquiring  
10 bank would do to confirm that an online merchant that it's  
11 sponsoring meets these criteria?

12 A. So common practice in the industry would be to, based off  
13 the information provided on the merchant application, they  
14 would pull financial documents for the principal or the  
15 merchant to confirm that they're financially responsible.

16 They would run credit reports on the principals if  
17 they knew that they had a history of payment and were  
18 financially responsible.

19 They would look at the business type that the merchant  
20 represents, and try to understand any unique risks presented by  
21 the merchant's business, predominantly to make sure that its a  
22 legal activity, a legal business.

23 They would also typically review the merchant website,  
24 if it's an internet merchant, to try to understand what  
25 products are being sold and how they're being sold. They would



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1 also typically check the --

2 Q. Sorry. One second, Mr. Elliott. Mr. Elliott, can you  
3 repeat what kind of file is it that they would usually check?

4 A. The file that they would typically check, we refer to it in  
5 the industry as MATCH, and MasterCard hosts what we call the  
6 MATCH file, also known as a terminated merchant file. And it's  
7 a file of merchants that are terminated for cause by other  
8 acquiring banks they had problems with.

9 And so, for example, if a merchant was terminated for  
10 fraud, lying on their application, chargebacks or doing  
11 something illegal, the acquirer would terminate them, and then  
12 the rules obligate that they be placed on this MATCH list or  
13 terminated merchant file. By checking any new applicants  
14 against this list, they could find out if other banks have had  
15 problems with them before they try them.

16 Q. Okay. You were actually quite a bit louder when you leaned  
17 forward. So if you don't mind, if you could stay close to the  
18 mic, that might be helpful.

19 Who maintains the terminated merchant file that you  
20 were just discussing?

21 A. MasterCard.

22 Q. And who has access to it?

23 A. All of the acquiring banks that participate in the Visa and  
24 MasterCard program.

25 Q. For this rule that we were looking at, that should still be

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1 in front of you, about the merchant qualification standards,  
2 was the version of that rule in place for the entirety of the  
3 period between 2016 through 2019?

4 A. Yes.

5 Q. And to your knowledge, were there any material changes made  
6 to this rule in that period?

7 A. The only update was the one in October of 2016, where there  
8 was an add about not misrepresenting the merchant outlet  
9 location.

10 Q. Okay. Looking just a little bit lower down on this same  
11 page, do you see a section titled 1.5.1.4, Submission of  
12 illegal transactions?

13 A. Yes.

14 Q. Can you read what it says below that for me?

15 A. An acquirer must not knowingly accept from a merchant for  
16 submission into the Visa payment system any transaction that is  
17 illegal or that the acquirer or merchant should have known was  
18 illegal.

19 Q. And for purposes of this rule, would illegal transactions  
20 include marijuana transactions?

21 A. It would.

22 Q. Was a version of this rule in place for the entirety of the  
23 period between 2016 and 2019?

24 A. It was.

25 Q. And are you aware of any material changes being made to

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1 this rule in that time period?

2 A. I'm not.

3 Q. So I think we can put the core rules away. I'd like to  
4 have you find what's been admitted into evidence and marked as  
5 Government Exhibit 2203.

6 And, Mr. Levine, if you can pull that up for everyone  
7 here.

8 A. 2203. Okay. We have it.

9 Q. Okay. So you have Government Exhibit 2203 in front of you?

10 A. I do.

11 Q. Do you recognized this?

12 A. I do.

13 Q. What is it?

14 A. It's the Global Brand Protection Program Guide for  
15 Acquirers. The publication my team puts out about the Global  
16 Brand Protection Program.

17 Q. And when was this particular version of the guide issued?

18 A. June 2017.

19 Q. What is the purpose of the Global Brand Protection Program  
20 guide?

21 A. The purpose of this guide is to update and educate  
22 acquirers on their obligations under the global brand  
23 protection programs and to understand how it operates and what  
24 their compliance obligations are.

25 Q. So I'd like to turn to page 5 of this document. There's a

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1 section one that says About This Guide. Let me know when  
2 you're there.

3 A. I'm there.

4 Q. Okay. Can you just read that first paragraph for me?

5 A. The Visa Global Brand Protection Program requires Visa  
6 acquirers to implement adequate controls to ensure their  
7 merchants do not process transactions that are illegal and/or  
8 may adversely affect the reputation of Visa or its affiliates.  
9 The Visa Global Brand Protection Program guide for acquirers  
10 provides that an overview of the GBPP and describes what  
11 acquirers must do to effectively control the regulatory,  
12 financial, reputation, brand and litigation exposures  
13 associated with card-not-present merchants.

14 Q. Okay. So looking at the last line, it says "describes what  
15 acquires must do to effectively control the regulatory,  
16 financial, reputation, brand, and litigation exposures  
17 associated with card-not-present merchants."

18 So again, would card-not-present merchants include  
19 online merchants?

20 A. They would, yes.

21 Q. So let's go to page 7 of this same document, and it should  
22 say section 2 at the top, Visa Global Brand Protection Program?

23 A. Yes, I'm there.

24 Q. Okay. Can you just again read this first paragraph for me?

25 A. With the continued growth of card-not-present transactions

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1 and elaborate schemes to conceal illicit activities, Visa and  
2 its acquiring members are frequently presented with new threats  
3 to regulatory, financial, brand and litigation risk.

4           Specific challenges include risk presented by online  
5 merchants selling: illegal or miscoded online gambling,  
6 prohibited pornography, which includes child abuse, bestiality,  
7 rape or other non-consensual sexual behavior, contraband  
8 tobacco, illegal or counterfeit pharmaceuticals, designer  
9 drugs, illegal supplements/nutraceuticals, counterfeit  
10 goods/intellectual property, infringing materials or the  
11 illegal sale of any other products or services.

12 Q. So this section lists a number of different types of  
13 transactions that Visa says poses specific challenges. What's  
14 your understanding of why these are listed as specific  
15 challenges?

16 A. These happened to be -- the industries represented happen  
17 to present the greatest risks to the Visa payment system, based  
18 on the number of entities trying to bring these activities in  
19 and the dollar volume surrounding those transactions, and then  
20 also the laws impacting them.

21 Q. Are there other types of transactions that can present  
22 risks to the Visa payment system?

23 A. There are, yes.

24 Q. So listed at the end, among the specific challenges, is the  
25 risk presented by the illegal sale of any other products or

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1 services. In the United States, would that include the sale of  
2 marijuana?

3 A. It does, yes.

4 Q. So I just want to look a little bit further down on that  
5 same page. Section 2.1, Program purpose and components. And  
6 you see where it says: The program's primary goal is to  
7 protect acquirers and the integrity of the Visa payment system  
8 by preventing merchants from, and then there's three bullets?  
9 Can you just read those three bullets for me?

10 A. Yes. Bullet one: Conducting illegal transactions; bullet  
11 two: Facilitating transactions that endanger public health and  
12 safety; bullet three: Processing transactions that may  
13 adversely affect the good will of the Visa payment system.

14 Q. Okay. I think we can turn away from the document for a  
15 minute. And can you just generally -- from your experience,  
16 can you tell me what the different components are of the Global  
17 Brand Protection Program?

18 A. Sure. So the first -- and I'm going to cover the  
19 components of the program that we enforce against clients  
20 without (indiscernible). The first phase of it is going to  
21 include the identification of a problematic merchant, and so  
22 that's the point in time where we identify an online merchant.  
23 And typically we focused in on online merchants when we  
24 identified them selling some illegal product as part of their  
25 store.

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1           The second thing is once we identify the merchant, we  
2           have to identify where they're located in the system. So once  
3           we identify who they're acquiring bank is, we notify the  
4           acquiring bank that it's violated the Global Brand Protection  
5           Program. And then, in turn, we ask how are they going to  
6           remediate it. So we send them a letter telling them that they  
7           violated it. Then we ask them to explain how they're going to  
8           fix the problem and remediate it, and then we decide, based on  
9           the feedback from the acquirer and the history in the program,  
10          whether or not we assign risk -- pardon me, whether we assign  
11          non-compliance assessments or fines.

12        Q. So the first phase that you mentioned was identification,  
13        right?

14        A. Yes.

15        Q. And that involved, among other things, trying to identify  
16        illegal transactions in the Visa system, right?

17        A. That's correct.

18        Q. So what are the different things that Visa does to identify  
19        violations of the Global Brand Protection Program?

20        A. So we have a two-part approach. We have a proactive  
21        approach, where we use a third-party entity to scan certain  
22        websites for illegal activity, and they attempt to make test  
23        buys at these merchants. We do that because we don't  
24        necessarily know by looking at websites what the merchant's  
25        name actually is and the payment system.

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1           So by conducting a test transaction, we can identify  
2   if they accept Visa, what bank they're processing with and what  
3   the name of that merchant actually is.

4           And once we've been able to identify them, we then  
5   look to move to the notification.

6   Q.   But going back to -- for us to focus on the identification  
7   phase, other than test transactions, are there other ways that  
8   violations are identified?

9   A.   There are. And the second reactive approach is we work off  
10   of tips and feedback we get from our client banks, issuers who  
11   often provide us with complaints about problematic merchants  
12   that they have identified. We also get tips from law  
13   enforcement or other entities, perhaps in the media about an  
14   entity selling something that's prohibited, and then we  
15   investigate that and run it through the identification process.

16   Q.   So the first thing you mentioned was test transactions,  
17   right? How frequently does Visa conduct test transactions?

18   A.   We do them weekly.

19   Q.   And does Visa currently routinely conduct test transactions  
20   for suspected marijuana merchants?

21   A.   Can you repeat that?

22   Q.   Does Visa -- right now, does Visa do routine test  
23   transactions for suspected marijuana merchants?

24   A.   We are not proactively testing marijuana merchant websites.  
25   We've taken a risk-based approach, and we're very heavily



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1 focused on illegal gambling and illegal pharmacies. We come  
2 across marijuana applications when they are reported to us by  
3 our client bank, or if we see them in one of our other  
4 compliance posts.

5 Q. So if I understand you correctly, is it fair to say that  
6 your priorities in this area have been set based on your  
7 risk-based approach; is that right?

8 A. That is correct.

9 Q. What do you mean by risk-based approach? What are the  
10 factors that Visa is considering?

11 A. We look at entities that are presenting the most  
12 significant threat to the payment system, and also, we look at  
13 that from the area of legality and laws that may apply to us.  
14 And then also, based on the volume of -- from these various  
15 industries that try to sneak into the payment system.

16 Q. You said that marijuana merchants do come to Visa's  
17 attention through tips; is that right?

18 A. That's correct.

19 Q. So does Visa conduct a test transaction when it receives a  
20 tip regarding a potential illegal transaction?

21 A. We do. If it's possible to do so, we do.

22 Q. And remind me again, what are some of the ways that Visa  
23 can receive tips about violations of its Global Brand  
24 Protection Program?

25 A. Some of the direct ways are card issuing banks that have

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1 had a negative experience. They contact us and complain about  
2 a certain merchant. We also may get something from law  
3 enforcement, or we may get something that we notice in the  
4 media.

5 The other thing that happens is we do run chargeback  
6 and fraud programs that identify merchants that have excessive  
7 volume of chargeback disputes, and if a merchant fits with the  
8 compliance programs, oftentimes the investigation may identify  
9 other problematic activity. But we have top marijuana  
10 merchants in the chargeback program, as well.

11 Q. So what does Visa do if it identifies illegal transactions  
12 being conducted by a merchant?

13 A. So what do we do? Well, one, if we identify the merchant,  
14 we then notify the acquiring bank that they have a problem,  
15 that they're in violation of the Global Brand Protection  
16 Program, and that they need to investigate it and get back to  
17 us with how they're going to fix it.

18 Q. And what can be the result of that investigation or  
19 notification?

20 A. Well, the investigation results coming back to us from the  
21 acquirer typically is we terminate the merchant, or if there's  
22 a question about it, they may want to talk with us and have a  
23 discussion, or if it's just a single product, for example,  
24 maybe the merchant is selling a counterfeit T-shirt, they may  
25 remove that good from the site and come back and say everything

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1 else is legal; we've removed the one problem product, and  
2 that's where we go.

3 Q. Can there also be assessments or fines that are imposed?

4 A. There can. The Global Brand Protection Program does  
5 include non-compliance assessments that can be assessed to the  
6 acquiring bank.

7 Q. What, if anything, does Visa do if it notices that an  
8 acquiring bank has repeated brand protection program violations  
9 for merchants it's sponsoring?

10 A. Well, if we get an acquiring bank that has multiple  
11 identifications or a history of violations, we can impose  
12 risk-reduction measures on them, which means we can limit them  
13 from being able to sign up any new card authorized merchants or  
14 agent or payment facilitators. We may also require them to  
15 undergo an operational audit to make sure they're compliant  
16 with our rules and have good risk controls in place.

17 Q. If there were sufficient issues, could you terminate an  
18 acquirer from the payment system?

19 A. We could, yes.

20 Q. And if a merchant is identified as selling an illegal  
21 product, can you require an acquirer to terminate the merchant?

22 A. We can, yes.

23 Q. So I think you mentioned Visa also has dispute and fraud  
24 monitoring programs?

25 A. I did.

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Elliott - Direct

1 Q. Can you just, at a high level, tell me how those work?

2 A. Sure. So we operate the Visa fraud monitoring program and  
3 the Visa dispute monitoring program. These programs operate on  
4 a monthly basis, and they identify any merchant or acquirer  
5 that generates an excessive level of fraud or disputes or what  
6 used to be called chargebacks.

7 So when we identify an entity crossing a program  
8 threshold, we pretty much rank the dispute. We send a letter  
9 to the acquiring bank, and we inform them that their merchant  
10 or themselves are above the acceptable threshold, and it must  
11 be fixed. And we give them a timeline to fix it. If they  
12 don't fix it, then the program will fine and an assessment will  
13 be sent to those acquiring banks.

14 Q. Okay. And if the thresholds are surpassed, are there any  
15 circumstances under which Visa would do its own review or  
16 investigation?

17 A. Well, if we see an entity that's moving across the payment  
18 system frequently, and we identify somebody trying to hide from  
19 our programs, then we will conduct our own investigation.

20 Q. If Visa did do its own investigation, what sort of things  
21 would Visa look at?

22 A. Well, we would look at the merchant applications that we  
23 would pull from the acquiring banks. We would look at the  
24 merchant website. We would try to understand what they're  
25 selling, how they're selling it. We'd look at chat rooms to

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Elliott - Direct

1 see what consumers are complaining about, you know, any  
2 information that we can obtain from our acquiring banks or from  
3 conducting web intelligence is what we would look at.

4 Q. I'd like to have you look at what's been marked and what's  
5 been admitted into evidence as Government Exhibit 1719. Let me  
6 know when you've found that.

7 A. Is that in this binder?

8 Q. Hmm, I don't know.

9 A. Because I don't see anything 1719.

10 Q. You know what, it might not be.

11 THE COURT: Counsel, how much more do you have?

12 MS. DEININGER: Less than half an hour, probably  
13 closer to 20 minutes.

14 THE COURT: Let's have a sidebar.

15 A. We don't have 17 -- either.

16 THE COURT: Excuse me.

17 MS. DEININGER: While I go to sidebar, I wonder if  
18 defense counsel's representatives have it there on the laptop.  
19 If not, we can move on from it.

20 (Continued on next page)

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Elliott - Direct

1 (At the side bar)

2 THE COURT: I never would have allowed this to begin  
3 after lunch if I had realized it was going to go over to  
4 another day, which is what, in effect, you're telling me.

5 MS. DEININGER: Probably including cross.

6 THE COURT: How long do you have on cross?

7 MR. BURCK: Your Honor, I'll try to keep it very  
8 short, maybe 45 minutes.

9 THE COURT: We only have 25 minutes until the jury  
10 leaves for the day. How long does the co-counsel have?

11 MR. HARID: I think we can keep it to under a half  
12 hour for our events.

13 THE COURT: And we can't start -- well, maybe we can,  
14 if he wants to get up at 5:00 a.m.

15 MS. DEININGER: I've been told he is available to  
16 start at the start of the court day.

17 THE COURT: I'm sorry, do you know that, or are you  
18 just guessing?

19 MS. DEININGER: No, I certainly know today he was.

20 MS. LA MORTE: We can finish with Darcy Cozzetto, if  
21 that's what your Honor prefers, and we can verify --

22 THE COURT: No, we're going to finish this witness.  
23 How much more do you have?

24 MS. DEININGER: I think it should be about -- I will  
25 certainly finish before the end of today.

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Elliott - Direct

1 THE COURT: Okay. I will hold you strictly to that.

2 MS. DEININGER: Understood.

3 THE COURT: 45 minutes?

4 MR. BURCK: 45 minutes, your Honor.

5 MR. GILBERT: Half an hour.

6 THE COURT: No more than five minutes on redirect. No  
7 recross.

8 MR. BURCK: No problem, your Honor.

9 MR. FOLLY: Your Honor, we'll also make your sure that  
10 we'll do everything to have him available tomorrow morning so  
11 we don't interrupt again the order of witnesses.

12 THE COURT: I really cannot tell you how disappointed  
13 I am. Let's go.

14 (Continued on next page)

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1 (In open court)

2 BY MS. DEININGER:

3 Q. All right. Mr. Elliott, can you hear me?

4 A. Again, yes.

5 Q. Did you find Government Exhibit 1719? If not, I'll just  
6 move on to a different subject.

7 A. We did not.

8 Q. Okay. You should have on the computer in front of you  
9 what's been admitted into evidence as Government Exhibit 2201.  
10 It should be on a computer, not a binder.

11 A. One moment.

12 Q. Okay.

13 A. Yes, I see it.

14 Q. Do you recognize it?

15 A. I do.

16 Q. Generally, what is it?

17 Mr. Levine, can you pull that up for everyone here.

18 A. This is a list of transactions that occurred with various  
19 U.S. issuing banks --

20 Q. Okay.

21 A. -- for a merchant based in the United Kingdom.

22 Q. And just looking at the top, I just want to kind of walk  
23 through the columns so we understand what we're looking for.  
24 Issuer name, what does that refer to?

25 A. That's the card issuing bank of a consumer engaged in



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1 transactions with the merchant within.

2 Q. What about the issuer country?

3 A. The country in which the issuer is located.

4 Q. Scrolling over to merchant category code, are those the --  
5 it's Column K. Are those the MCC codes we discussed earlier?

6 A. They are, yes.

7 Q. And then in column L it says Merchant Category. Does that  
8 correspond to the merchant category code in Column K?

9 A. One moment. It does, yes.

10 Q. Okay. I just want to look at a few lines of examples. So  
11 if you look just at line 1, what's -- the Column D says  
12 Purchase Date. What was the date of the transaction?

13 A. The purchase date is the date of the transaction with the  
14 date there.

15 Q. And what does it say there, I guess, on line 5, under  
16 Column D?

17 A. Well, it says that the issuer was JP Morgan Chase. They  
18 were in the United States. The purchase date was May 3rd,  
19 2018, and it was a sales draft. They list the transaction ID  
20 number and list the merchant name of medical-stf.com. It lists  
21 the merchant country as United Kingdom, and then it has a phone  
22 number of the merchant city field, and it states the merchant  
23 category code is 7339, which is stenographic services.

24 Q. Okay.

25 A. This is from the acquiring bank, which is PXP Financial.

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Elliott - Direct

1 Q. And can we look at the line below that and look at the same  
2 information?

3 A. The second line is Low Six. It states that JP Morgan Chase  
4 Bank was also the issuer. This was a debit card. They were  
5 located in the United States of America. The transaction date  
6 was July 3rd, 2018, with a sales draft. It says the  
7 transaction ID. It lists the merchant name, Soniclogistix. It  
8 lists the country as United Kingdom, the City of Bristol, and  
9 then it lists the merchant category code of 4215, which is  
10 stated as courier services. And that was what the bank or the  
11 acquirer called EMerchantPay Limited.

12 Q. If you scroll down just a little bit, line 45, it's another  
13 JP Morgan Chase transaction. Can you read what's in that line  
14 once you get there?

15 A. This is also JP Morgan Chase as the issuer. They're  
16 located in the United States of America. The date of the  
17 transaction was July 7th, 2018. It was a sales draft, and  
18 skipping over the transaction ID, the name of the merchant was  
19 Goodegreenbazaar.com. They are located in the United Kingdom,  
20 the city was Leeds. Merchant category code is 5733. The music  
21 stores/pianos, and it's also the EMerchantPay Limited.

22 Q. So in these examples that we looked at, the merchant  
23 category, the merchant category code, would any of these have  
24 been the appropriate merchant category to use for a merchant  
25 whose primary business was as a marijuana dispensary?

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1 A. No, it would not be the correct MCC used.

2 Q. And just focusing on the issuer country column, if you  
3 scroll a little bit, what is generally listed as the issuer  
4 country for each transaction?

5 A. The United States of America.

6 Q. And so I just want to look at some of the issuers that are  
7 listed. In line 11, what issuer is listed?

8 A. Bank of America.

9 Q. And how about on line 13?

10 A. Wells Fargo Bank.

11 Q. And in line 44?

12 A. Citibank.

13 Q. So we can put this away, and I want to talk about a  
14 different subject for a minute. Were you involved on any  
15 occasions in the 2016 to 2019 time period when Visa discovered  
16 that a merchant was submitting marijuana transactions into the  
17 Visa system?

18 A. I was.

19 Q. Can you describe an example for me?

20 A. We had a small bank out of Texas identified in our  
21 chargeback and file programs for dispute, and looking further  
22 into their activity, meaning looking into their merchant  
23 portfolio, we saw what looked like a number of cannabis and CBD  
24 purchases.

25 Q. Just to be clear, how did Visa first become aware that

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1 there was a potential issue at this bank?

2 A. The acquiring bank and some of their merchants showed up in  
3 our chargeback dispute program.

4 Q. Okay. That's your chargeback and/or dispute monitoring  
5 program?

6 A. That's correct.

7 Q. And so what action, if any, did Visa take once it became  
8 aware that there were potential cannabis merchants?

9 A. So we reached out to the acquiring bank, had a discussion  
10 with their executive management, reminded them of our rules,  
11 told them that they could not sign cannabis merchants. We did  
12 assess various program fine assessments to them based on the  
13 frequency of their identification. We also put them under  
14 risk-redemption measures, when they were able to revoke people  
15 to sign, forced them to have a third-party audit, and when the  
16 audit was completed and they remediated their issues, we  
17 allowed them to resume normal acquiring. They basically  
18 terminated their cannabis merchant.

19 Q. So what did happen specifically to the merchants that were  
20 identified as selling marijuana products?

21 A. To the best of our knowledge, they were terminated.

22 Q. I'd like you to look at what's been admitted into evidence  
23 as Government Exhibit 2226.

24 And, Mr. Levine, you can pull that up for everyone  
25 here.

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1 A. Okay. I found it.

2 Q. Do you recognize this?

3 A. I do.

4 Q. And what is it?

5 A. This is a case detail related to the Brand Protection  
6 Identification Program.

7 Q. Is this a case detail report for one of the merchants  
8 involved in that Texas bank incident that you were just  
9 describing for us?

10 A. It is, yes.

11 Q. And so looking at the top of the document, what's the case  
12 open date?

13 A. February 15th, 2019.

14 Q. And going down to violation information, what's the  
15 violation category?

16 A. Illegal transactions.

17 Q. And what's the merchant name?

18 A. TGS East Kentucky Avenue.

19 Q. And the merchant termination date?

20 A. 2/13/2019.

21 Q. And as kind of in the middle of the page, under product  
22 description, what does it say?

23 A. Sales of cannabis.

24 Q. And going to page 2, where it says NCA information, what  
25 does NCA information refer to?

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Elliott - Direct

1 A. NCS stands for noncompliance assessment, and this basically  
2 summarizes the amount of the NCA liability and the outcome.

3 Q. And so here, what was the outcome?

4 A. We assessed a \$25,000 noncompliance assessment.

5 Q. And then going to page 4 really quickly, under Review  
6 Information -- do you see where it says Review Information,  
7 description of merchant product or services?

8 A. I do.

9 Q. What does it say under that?

10 A. Dispensary.

11 Q. Okay. We can turn away from this document. And I want to  
12 ask you, to your knowledge, was Eaze ever -- Eaze, spelled  
13 E-a-z-e -- ever identified as being involved in violation of  
14 Visa's Global Brand Protection Program?

15 A. It was.

16 Q. Were you personally involved in that investigation?

17 A. I was notified by one of our fellow Visa employees of a  
18 media article that suggested that Eaze was accepting Visa, and  
19 when I received that notification from the fellow employee, I  
20 sent it to our program manager, Ms. Schofield, to have it  
21 investigated.

22 Q. And what is your understanding of what she did?

23 A. She then ran it through the traditional brand protection  
24 program process, which included having our vendor do a test  
25 transaction on the website. Based on the information from the

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1 test transaction, we notified acquiring banks that we had a  
2 brand protection program violation.

3 Q. And just to remind us, what's the purpose of the test  
4 transaction?

5 A. The purpose -- well, since Visa does not have a contract  
6 with the merchants, if there's a website out there, we don't  
7 know what acquiring bank is processing the transaction. We  
8 don't know what name they're actually using to run through the  
9 system. So by conducting a test transaction, we basically get  
10 a sense of what data they're using to enter the system; so we  
11 can identify the actual name they're using and to identify the  
12 acquiring bank that is routing their transaction into the  
13 system.

14 And so you can think of a test transaction kind of  
15 like a radar ping that identifies where that identity is  
16 located and what the name is.

17 Q. Okay. I'd like you to look at what's been admitted into  
18 evidence as Government Exhibit 2231 and 2232. Do you see if  
19 you have those in front of you?

20 A. I do, yes.

21 Q. Okay. So looking at Government Exhibit 2232 first, what is  
22 that?

23 A. 2232?

24 Q. Yes.

25 A. That is a screenshot that our vendor took when they were

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1 conducting the test transaction at the Eaze site.

2 Q. And what does it say at the top in the URL bar?

3 A. It says WWW.Eaze.com/checkout.

4 Q. And what is the product listed in the checkout boxes?

5 A. Minis Hybrid, Humboldt Farms.

6 Q. And so now if you look at Government Exhibit 2231. What  
7 generally is that?

8 A. That's another screenshot of the test transaction that  
9 occurred at the website.

10 Q. And this one says Soniclogistix, what does that refer to?

11 A. That refers to the merchant name.

12 Q. And under "Status," it says "declined." Why does it say  
13 "declined"?

14 A. It says declined because the test cards we use were set to  
15 decline so that we wouldn't actually be purchasing the good or  
16 service in doing a test.

17 Q. And what was the date this test transaction was conducted?

18 A. June 14th, 2019.

19 Q. So now I'd like you to turn to what's been admitted into  
20 evidence as Government Exhibit 2230. Let me know when you have  
21 that.

22 A. I do. I have it.

23 Q. Do you recognize this?

24 A. I do.

25 Q. What is it?



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1 A. This is an example of a letter that was sent to  
2 EMerchantPay Limited, the acquiring bank involved in this  
3 transaction.

4 Q. What's the date of this letter?

5 A. July 30, 2019.

6 Q. Can you look under the first paragraph, under the greeting  
7 "Dear George" and read that for me?

8 A. It reads as follows: Visa core rules and Visa product and  
9 service rules. Visa rules prohibits acquirers from submitting  
10 illegal or brand-damaging transactions into the Visa payment  
11 system. Acquirers are reminded that their merchant transaction  
12 activity must be legal in both the buyer's and seller's  
13 jurisdiction to comply with this requirement.

14 Q. And now looking at the third paragraph that starts  
15 "recently," can you read that for me?

16 A. Recently your merchant, Soniclogistix, was identified by  
17 the GBPP for processing illegal and/or brand-damaging  
18 transactions. Information regarding the violation is provided  
19 in the brand protection identification management tool.

20 Q. And the section underneath that says: Immediate required  
21 action. Can you just read the paragraph below that, through  
22 the bullet points?

23 A. It reads as follows: Visa requires that your financial  
24 institution investigate the claim and provide a written  
25 response to Visa within five days of receipt of this

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1 notification. The response must be include: bullet one, an  
2 explanation detailing how the violation will be remediated;  
3 bullet two, the merchant application; bullet three, pertinent  
4 documentation demonstrating merchant compliance with the Visa  
5 rules requirement that prohibits illegal transactions from  
6 entering the payment system.

7 Q. I'd like you to now turn to what's been admitted in  
8 evidence as Government Exhibit 2229. Do you see that?

9 A. I don't know that I have that.

10 Q. 2229?

11 A. One moment.

12 Q. Okay.

13 A. That's pulled up on the screen now, yes.

14 Q. Okay. What is this document?

15 A. This document is the letter that Visa received from ECP,  
16 the merchant acquiring bank after this identification.

17 Q. And so this is their response in response to your  
18 notification letter?

19 A. This is the bank's response, yes.

20 Q. Looking at the --

21 THE COURT: You realize you have three minutes.

22 MS. DEININGER: Yes.

23 Q. Looking at the second paragraph, do you see where it says:  
24 The merchant operates under direct contractual relationship  
25 under agent Esepa finance?

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1 A. Hold on.

2 Q. It's the second full paragraph, the last sentence there.  
3 That's okay. Let's just turn to the second page.

4 A. Okay. I'm on the second page.

5 Q. And just read the sentence at the very top?

6 A. All merchants boarded through this partner, Esepa finance  
7 GMBH, were terminated. The partner was deregistered as an  
8 agent under the ECP and listed in VMSS. Please find attached a  
9 print screen of the listing.

10 Q. And what's VMSS?

11 A. Since this was a European identification, VMSS is Visa's  
12 equivalent of MasterCard's MATCH file. It's a listing of  
13 terminated merchants.

14 Q. Can you pull up now what's been admitted into evidence as  
15 Government Exhibit 2229?

16 A. Okay.

17 Q. 2229.

18 A. We're there.

19 Q. Sorry, 2227.

20 A. Okay, one moment. Okay.

21 Q. So what is this?

22 A. This is a document my team produced that summarized the  
23 violations that Eaze had for any Global Brand Protection  
24 Program.

25 Q. And looking at the left-hand side, what does the initial

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Elliott - Direct

1 notification mean?

2 A. Well, that means the date by which we notified the  
3 acquiring bank of a violation.

4 Q. And what month did those occur in?

5 A. There were two of them in July of 2019, and three of them  
6 in June of 2019.

7 Q. Looking at the fourth column, it says Merchant URL. What  
8 is merchant URL?

9 A. That are the websites where we conducted the test  
10 transactions.

11 Q. And so there were two merchant URLs listed here. What are  
12 those?

13 A. One of them is Eazewellness.com; the other is Eaze.com.

14 Q. And what acquirers were involved with these merchants?

15 A. There were three, United Bank for Africa, EMerchantPay  
16 Limited, and PXP Financial Limited.

17 Q. What was the category of the violations?

18 A. Well, these were illegal transactions.

19 Q. And what was the resolution status for each of these?

20 A. All five were listed as terminated.

21 Q. And were assessments imposed on the acquirers?

22 A. Yes, there were two \$25,000 noncompliance assessments at  
23 that.

24 Q. All right. And --

25 THE COURT: All right. That concludes the direct

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1 testimony.

2 Ladies and gentlemen, we will continue with this  
3 tomorrow morning. So I don't even need to say be on time  
4 because you always are on time. I'm impressed, but anyway, see  
5 you tomorrow morning. Have a good evening.

6 MS. DEININGER: Thank you, Mr. Elliott.

7 THE COURT: Mr. Elliott, please stay there for a  
8 minute.

9 THE WITNESS: Okay.

10 (Jury not present)

11 THE COURT: Please be seated.

12 Mr. Elliott, we normally start, and we will start, at  
13 9:45 New York time. Are you available to be where you are now  
14 at 6:45 your time?

15 THE WITNESS: I will be, your Honor.

16 THE COURT: Very good. Thank you so much. I  
17 appreciate it. We'll see you then tomorrow.

18 THE WITNESS: Okay.

19 THE COURT: Let me also ask, are the Arnold Porter  
20 lawyers here?

21 MR. ASNER: I am, your Honor.

22 THE COURT: Oh, they're in the courtroom. They're  
23 not -- where is Mr. Elliott?

24 MS. DEININGER: He's in California. There is a  
25 representative there.

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1 THE COURT: I thought he was in your office in  
2 California.

3 MR. ASNER: I'm in the New York office of Arnold and  
4 Porter.

5 THE COURT: You're misunderstanding my point, excuse  
6 me. Where is physically Mr. Elliott? Where are you right now?

7 THE WITNESS: I'm in the Arnold and Porter offices in  
8 San Francisco.

9 THE COURT: Is there someone there?

10 MR. ASNER: Yes, your Honor. I have an associate  
11 there.

12 THE COURT: So can either you or the associate tell  
13 me, are you recording this testimony?

14 MR. ASNER: No, your Honor, we're not.

15 THE COURT: All right. So that's what I wanted to  
16 know. That puts my mind at rest. Thank you very much.

17 So counsel already know the time limits for tomorrow.

18 Mr. Elliott, you're excused. We'll see you tomorrow  
19 at right before your breakfast.

20 THE WITNESS: Okay. Thank you, your Honor.

21 THE COURT: Thank you.

22 (Witness excused temporarily)

23 All right. Anything else we need to take up today?  
24 See you tomorrow at 9:30.

25 MS. LA MORTE: Your Honor, you want us at 9:45, or do

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1 you want us earlier?

2 THE COURT: Well, what do you want to raise with the  
3 Court? At the moment -- I'm sorry to be so out of joint. At  
4 the moment, I'm not interested, frankly, in hearing from the  
5 government about virtually anything, but I'm sure after a good  
6 night's rest I will be more --

7 MS. LA MORTE: Understood, your Honor. I can lay out  
8 a few issues for tomorrow, or we can just do it in the morning.  
9 It doesn't matter.

10 THE COURT: Why don't we meet at 9:15.

11 MS. LA MORTE: Okay, great. Thank you, your Honor.

12 (Adjourned to 9:15 a.m. on March 17, 2021)

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## DEFENDANT EXHIBITS

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